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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

The following Bills were introduced in Lok Sabha on the 29th August 1972.

BILL No. 85 OF 1972

A Bill to consolidate and amend the law regulating certain payments, dealings in foreign exchange and securities, transactions indirectly affecting foreign exchange and the import and export of currency and bullion, for the conservation of the foreign exchange resources of the country and the proper utilisation thereof in the interests of the economic development of the country.

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

Short title, extent, application and commencement.

1. (1) This Act may be called the Foreign Exchange Regulation Act, 1972.

(2) It extends to the whole of India.

(3) It applies also to all citizens of India outside India and to branches and agencies outside India of companies or bodies corporate registered or incorporated in India.

(4) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "Appellate Board" means the Foreign Exchange Regulation Appellate Board constituted by the Central Government under sub-section (*1*) of section 48;

(*b*) "authorised dealer" means a person for the time being authorised under section 6 to deal in foreign exchange;

(*c*) "bearer certificate" means a certificate of title to securities by the delivery of which (with or without endorsement) the title to the securities is transferable;

(*d*) "certificate of title to a security" means any document used in the ordinary course of business as proof of the possession or control of the security, or authorising or purporting to authorise, either by an endorsement or by delivery, the possessor of the document to transfer or receive the security thereby represented;

(*e*) "coupon" means a coupon representing dividends or interest on a security;

(*f*) "currency" includes all coins, currency notes, banks notes, postal notes, postal orders, money orders, cheques, drafts, traveller's cheques, letters of credit, bills of exchange and promissory notes;

(*g*) "foreign currency" means any currency other than Indian currency;

(*h*) "foreign exchange" means foreign currency and includes—

(*i*) all deposits, credits and balances payable in any foreign currency, and any drafts, traveller's cheques, letters of credit and bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency;

(*ii*) any instrument payable, at the option of the drawee or holder thereof or any other party thereto, either in Indian currency or in foreign currency or partly in one and partly in the other;

(*i*) "foreign security" means any security created or issued elsewhere than in India, and any security the principal of or interest on which is payable in any foreign currency or elsewhere than in India;

(*j*) "gold" includes gold in the form of coin, whether legal tender or not, or in the form of bullion or ingot, whether refined or not, and jewellery or articles made wholly or mainly of gold.

Explanation.—Any jewellery or article which contains gold shall be deemed to be made wholly or mainly of gold, if the value of the gold contained therein exceeds such percentage (not being below forty per cent.), as the Reserve Bank may, from time to time, notify in the Official Gazette, of the value of such jewellery or article;

(*k*) "Indian currency" means currency which is expressed or drawn in Indian rupees but does not include special bank notes and special one-rupee notes issued under section 28A of the Reserve Bank of India Act, 1934;

1934.

(*l*) "Indian customs waters" means the waters extending into the sea to a distance of twelve nautical miles measured from the appropriate base line on the coast of India and includes any bay, gulf, harbour, creek or tidal river;

(*m*) "money-changer" means a person for the time being authorised under section 7 to deal in foreign currency;

(*n*) "overseas market", in relation to any goods, means the market in the country outside India and in which such goods are intended to be sold;

(o) "owner", in relation to any security, includes any person who has power to sell or transfer the security, or who has the custody thereof or who receives, whether on his own behalf or on behalf of any other person, dividends or interest thereon, and who has any interest therein, and in a case where any security is held on any trust or dividends or interest thereon are paid into a trust fund, also includes any trustee or any person entitled to enforce the performance of the trust or to revoke or vary, with or without the consent of any other person, the trust or any terms thereof, or to control the investment of the trust moneys;

(*p*) "person resident in India" means—

(*i*) a citizen of India, who has, at any time after the 25th March, 1947, been staying in India, but does not include a citizen of India who has gone out of, or stays outside, India, in either case—

(*a*) for or on taking up employment outside India, or

(*b*) for carrying on outside India a business or vocation outside India, or

(*c*) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

(*ii*) a citizen of India, who having ceased by virtue of paragraph (*a*) or paragraph (*b*) or paragraph (*c*) of sub-clause (*i*) to be resident in India, returns to, or stays in, India, in either case—

(*a*) for or on taking up employment in India, or

(*b*) for carrying on in India a business or vocation in India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

(*iii*) a person, not being a citizen of India, who has come to, or stays in, India, in either case—

(*a*) for or on taking up employment in India, or

(*b*) for carrying on in India a business or vocation in India, or

(*c*) for staying with his or her spouse, such spouse being a person resident in India, or

(*d*) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

(*iv*) a citizen of India, who, not having stayed in India at any time after the 25th March, 1947, comes to India for any of the purposes referred to in paragraphs (*a*), (*b*) and (*c*) of sub-clause (*iii*) or for the purpose and in the circumstances referred to in paragraph (*d*) of that sub-clause or having come to India stays in India for any such purpose and in such circumstances.

Explanation I.—A person, who, having been a citizen of India at the time of his birth, acquires the citizenship of another country, shall, for the purposes of this clause be deemed to be a citizen of India.

Explanation II.—A person, who has, by reason only of paragraph (*a*) or paragraph (*b*) or paragraph (*d*) of sub-clause (*iii*) been resident in India, shall, during any period in which he is outside India, be deemed to be not resident in India;

(*q*) "person resident outside India" means a person who is not resident in India.

(*r*) "precious stone" includes pearl and semi-precious stone and such other stone or gem as the Central Government may, for the purposes of this Act, notify in this behalf in the Official Gazette;

(*s*) "prescribed" means prescribed by rules made under this Act;

(*t*) "Reserve Bank" means the Reserve Bank of India;

(*u*) "security" means shares, stocks, bonds, debentures, debenture stock, Government securities as defined in the Public Debt Act, 1944, savings certificates to which the Government Savings Certificates Act, 1959, applies, deposit receipts in respect of deposits of securities, and units or sub-units of unit trusts and includes certificates of title to securities, but does not include bills of exchange or promissory notes other than Government promissory notes; 18 of 1944 46 of 1959

(*v*) "silver" includes silver bullion or ingot, silver sheets and plates which have undergone no process of manufacture subsequent to rolling and uncurrent silver coin which is not legal tender in India or elsewhere and jewellery or articles made wholly or mainly of silver;

(*w*) "transfer", in relation to any security, includes transfer by way of loan or security.

Classes of officers of Enforcement.

3. There shall be the following classes of officers of Enforcement, namely:—

(a) **Directors of Enforcement;**

(b) **Additional Directors of Enforcement;**

(c) **Deputy Directors of Enforcement;**

(d) **Assistant Directors of Enforcement; and**

(e) **such other class of officers of Enforcement as may be appointed for the purposes of this Act.**

Appointment and powers of officers of Enforcement.

4. (*1*) The Central Government may appoint such persons as it thinks fit to be officers of Enforcement.

(*2*) Without prejudice to the provisions of sub-section (*1*), the Central Government may authorise a Director of Enforcement or an Additional Director of Enforcement or a Deputy Director of Enforcement or an Assistant Director of Enforcement to appoint officers of Enforcement below the rank of an Assistant Director of Enforcement.

(*3*) Subject to such conditions and restrictions as the Central Government may impose, an officer of Enforcement may exercise the powers and discharge the duties conferred or imposed on him under this Act.

Entrustment of functions of Director or other officer of Enforcement.

5. The Central Government may, by order and subject to such conditions and restrictions as it thinks fit to impose, authorise any officer of customs or any Central Excise Officer or any police officer or any other officer of the Central Government or a State Government to exercise such of the powers and discharge such of the duties of the Director of Enforcement or any other officer of Enforcement under this Act as may be specified in the order.

Authorised dealers in foreign exchange.

6. (*1*) The Reserve Bank may, on an application made to it in this behalf, authorise any person to deal in foreign exchange.

(*2*) An authorisation under this section shall be in writing and—

(*i*) may authorise dealings in all foreign currencies or may be restricted to authorising dealings in specified foreign currencies only;

(*ii*) may authorise transactions of all descriptions in foreign currencies or may be restricted to authorising specified transactions only;

(*iii*) may be granted to be effective for a specified period, or within specified amounts;

(*iv*) may be granted subject to such conditions as may be specified therein.

(*3*) Any authorisation granted under sub-section (*1*) may be revoked by the Reserve Bank at any time if the Reserve Bank is satisfied that,—

(*i*) it is in the public interest to do so; or

(*ii*) the authorised dealer has not complied with the conditions subject to which the authorisation was granted or has contravened the provisions of this Act or of any rule, notification, direction or order made thereunder:

Provided that no such authorisation shall be revoked on the ground specified in clause (*ii*) unless the authorised dealer has been given a reasonable opportunity of being heard in the matter.

(4) An authorised dealer shall, in all his dealings in foreign exchange and in the exercise and discharge of the powers and of the functions delegated to him under section 67, comply with such general or special directions or instructions as the Reserve Bank may, from time to time, think fit to give, and, except with the previous permission of the Reserve Bank, an authorised dealer shall not engage in any transaction involving any foreign exchange which is not in conformity with the terms of his authorisation under this section.

(5) An authorised dealer shall, before undertaking any transaction in foreign exchange on behalf of any person, require that person to make such declarations and to give such information as will reasonably satisfy him that the transaction will not involve, and is not designed for the purpose of, any contravention or evasion of the provisions of this Act or of any rule, notification, direction or order made thereunder, and where the said person refuses to comply with any such requirement or makes only unsatisfactory compliance therewith, the authorised dealer shall refuse to undertake the transaction and shall, if he has reason to believe that any such contravention or evasion as aforesaid is contemplated by the person, report the matter to the Reserve Bank.

Money-changers.

7. (1) The Reserve Bank may, on an application made to it in this behalf, authorise any person to deal in foreign currency.

(2) An authorisation under this section shall be in writing and—

(i) may authorise dealings in all foreign currencies or may be restricted to authorising dealings in specified foreign currencies only;

(ii) may authorise transactions of all descriptions in foreign currencies or may be restricted to authorising specified transactions only;

(iii) may be granted with respect to a particular place where alone the money-changer shall carry on his business;

(iv) may be granted to be effective for a specified period, or within specified amounts;

(v) may be granted subject to such conditions as may be specified therein.

(3) Any authorisation granted under sub-section (1) may be revoked by the Reserve Bank at any time if the Reserve Bank is satisfied that—

(i) it is in the public interest to do so; or

(ii) the money-changer has not complied with the conditions subject to which the authorisation was granted or has contravened the provisions of this Act or of any rule, notification, direction or order made thereunder:

Provided that no such authorisation shall be revoked on the ground specified in clause (ii) unless the money-changer has been given a reasonable opportunity of being heard in the matter.

(4) The provisions of sub-sections (4) and (5) of section 6 shall, in so far as they are applicable, apply in relation to a money-changer as they apply in relation to an authorised dealer.

Explanation.—In this section, "foreign currency" means foreign currency in the form of notes, coins or traveller's cheques and "dealing" means purchasing foreign currency in the form of notes, coins or traveller's cheques or selling foreign currency in the form of notes or coins.

8. (*1*) Except with the previous general or special permission of the Reserve Bank, no person other than an authorised dealer shall in India, and no person resident in India other than an authorised dealer shall outside India, purchase or otherwise acquire or borrow from, or sell, or otherwise transfer or lend to or exchange with, any person not being an authorised dealer, any foreign exchange: Restrictions on dealing in foreign exchange.

Provided that nothing in this sub-section shall apply to any purchase or sale of foreign currency effected in India between any person and a money-changer.

Explanation.—For the purposes of this sub-section, a person, who deposits foreign exchange with another person or opens an account in foreign exchange with another person, shall be deemed to lend foreign exchange to such other person.

(*2*) Except with the previous general or special permission of the Reserve Bank, no person, whether an authorised dealer or a money-changer or otherwise, shall enter into any transaction which provides for the conversion of Indian currency into foreign currency or foreign currency into Indian currency at rates of exchange other than the rates for the time being authorised by the Reserve Bank.

(*3*) Where any foreign exchange is acquired by any person, other than an authorised dealer or a money-changer, for any particular purpose, or where any person has been permitted conditionally to acquire foreign exchange, the said person shall not use the foreign exchange so acquired otherwise than for that purpose or, as the case may be, fail to comply with any condition to which the permission granted to him is subject, and where any foreign exchange so acquired cannot be so used or the conditions cannot be complied with, the said person shall, within a period of thirty days from the date on which he comes to know that such foreign exchange cannot be so used or the conditions cannot be complied with, sell the foreign exchange to an authorised dealer or to a money-changer.

(*4*) For the avoidance of doubt, it is hereby declared that where a person acquires foreign exchange for sending or bringing into India any goods but sends or brings no such goods within a reasonable time or sends or brings any goods of a kind or quality different from that specified by him at the time of acquisition of the foreign exchange, such person shall, unless the contrary is proved, be presumed not to have been able to use the foreign exchange for the purpose for which he acquired it or, as the case may be, to have used the foreign exchange so acquired otherwise than for the purposes for which it was acquired.

(*5*) Nothing in this section shall be deemed to prevent a person from buying from any post office, in accordance with any law or rules made thereunder for the time being in force, any foreign exchange in the form of postal orders or money orders.

9. (*1*) Save as may be provided in and in accordance with any general or special exemption from the provisions of this sub-section which may be granted conditionally or unconditionally by the Reserve Bank, no person in, or resident in, India shall— Restrictions on payments

(*a*) make any payment to or for the credit of any person resident outside India;

(*b*) receive, otherwise than through an authorised dealer, any payment by order or on behalf of any person resident outside India.

Explanation.—For the purposes of this clause, where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorised dealer) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authorised dealer;

(c) draw, issue or negotiate any bill of exchange or promissory note or acknowledge any debt, so that a right (whether actual or contingent) to receive a payment is created or transferred in favour of any person resident outside India;

(*d*) make any payment to, or for the credit of, any person by order or on behalf of any person resident outside India;

(*e*) place any sum to the credit of any person resident outside India;

(*f*) make any payment to, or for the credit of, any person or receive any payment for, or by order or on behalf of, any person as consideration for or in association with,—

(*i*) the receipt by any person of a payment or the acquisition by any person of property outside India;

(*ii*) the creation or transfer in favour of any person of a right (whether actual or contingent) to receive payment or acquire property outside India;

(*g*) draw, issue or negotiate any bill of exchange or promissory note, transfer any security or acknowledge any debt, so that a right (whether actual or contingent) to receive a payment is created or transferred in favour of any person as consideration for or in association with any matter referred to in clause (*f*).

(2) Nothing in sub-section (*1*) shall render unlawful—

(*a*) the making of any payment already authorised either with foreign exchange obtained from an authorised dealer or a money-changer under section 8 or with foreign exchange retained by a person in pursuance of an authorisation granted by the Reserve Bank;

(*b*) the making of any payment with foreign exchange received by way of salary or payment for services not arising from any business in, or anything done while in, India.

(3) Save as may be provided in, and in accordance with, any general or special exemption from the provisions of this sub-section, which may be granted conditionally or unconditionally by the Reserve Bank, no person shall remit or cause to be remitted any amount from any foreign country into India except in such a way that the remittance is received in India only through an authorised dealer.

(4) Nothing in this section shall restrict the doing by any person of anything within the scope of any authorisation or exemption granted under this Act.

(5) For the purposes of this section and section 18 "security" includes coupons or warrants representing dividends or interest and life or endowment insurance policies.

Blocked accounts.

10. (1) Where an exemption from the provisions of section 9 is granted by the Reserve Bank in respect of payment of any sum to any person resident outside India and the exemption is made subject to the condition that the payment is made to a blocked account—

(a) the payment shall be made to a blocked account in the name of that person in such manner as the Reserve Bank may by general or special order direct;

(b) the crediting of that sum to that account shall, to the extent of the sum credited, be a good discharge to the person making the payment.

(2) No sum standing at the credit of a blocked account shall be drawn on except in accordance with any general or special permission which may be granted conditionally or otherwise by the Reserve Bank.

(3) In this section, "blocked account" means an account opened, whether before or after the commencement of this Act, as a blocked account at any office or branch in India of a bank authorised in this behalf by the Reserve Bank, or an account blocked, whether before or after such commencement, by order of the Reserve Bank.

tions regarding assets held by non-residents.

11. Where the Reserve Bank considers it necessary or expedient in the public interest so to do in respect of any asset in India held by or accruing to or transferred to or to be transferred to, either a person resident outside India or a person intending to become resident outside India, it may impose a condition that the said asset shall not be transferred, assigned, pledged, charged or dealt with in any manner whatsoever except in accordance with any general or special permission, which may be granted conditionally or otherwise, by the Reserve Bank.

Special accounts.

12. (1) Where in the opinion of the Central Government it is necessary or expedient to regulate payments due to persons resident in any territory, the Central Government may, by notification in the Official Gazette, direct that such payments or any class of such payments shall be made only into an account (hereafter in this section referred to as a special account) to be maintained for the purpose by the Reserve Bank or an authorised dealer specially authorised by the Reserve Bank in this behalf.

(2) The credit of a sum to a special account shall, to the extent of the sum credited, be a good discharge to the person making the payment:

Provided that where the liability of the person making the payment is to make the payment in foreign currency, the extent of the discharge shall be ascertained by converting the amount paid into that currency at such rate of exchange as is for the time being fixed or authorised by the Reserve Bank.

(3) The sum standing to the credit of any special account shall, from time to time, be applied—

(a) where any agreement is entered into between the Central Government and the Government of the territory to which the aforesaid notification relates, for the regulation of payments between persons resident in India and in that territory, in such manner as the Reserve Bank, having regard to the provisions of such agreement, may direct, or

(b) where no such agreement is entered into, for the purpose of paying wholly or partly, and in such order of preference and at such times as the Central Government may direct, debts due from the persons resident in the said territory to persons resident in India or in such other territories as the Central Government may by order specify in his behalf.

Restrictions on import and export of certain currency and bullion.

13. (1) The Central Government may, by notification in the Official Gazette, order that, subject to such exemption, if any, as may be specified in the notification, no person shall, except with the general or special permission of the Reserve Bank and on payment of the fee, if any, prescribed, bring or send into India any gold or silver or any foreign exchange or any Indian bank notes or currency notes or coins.

Explanation.—For the purposes of this sub-section the bringing or sending into any port or place in India of any such article as aforesaid intended to be taken out of India without being removed from the ship or conveyance in which it is being carried shall nonetheless be deemed to be a bringing, or, as the case may be, sending, into India of that article.

(2) No person shall, except with the general or special permission of the Reserve Bank or the written permission of a person authorised in this behalf by the Reserve Bank, take or send out of India any gold, jewellery or precious stones or Indian currency or foreign exchange other than foreign exchange obtained by him from an authorised dealer or from a money-changer.

Acquisition by Central Government of foreign exchange.

14. The Central Government may, by notification in the Official Gazette, order every person in, or resident in, India—

(a) who owns or holds such foreign exchange as may be specified in the notification, to offer it, or cause it to be offered, for sale to the Reserve Bank on behalf of the Central Government or to such person, as the Reserve Bank may authorise for the purpose, at such price as the Central Government may fix, being a price which, in the opinion of the Central Government, is not less than the market rate of the foreign exchange when it is offered for sale;

(b) who is entitled to assign any right to receive such foreign exchange as may be specified in the notification, to transfer that right to the Reserve Bank on behalf of the Central Government on payment of such consideration therefor as the Central Government may fix having regard to the rate for the time being authorised by the Reserve Bank in pursuance of sub-section (2) of section 8 for conversion into Indian currency of the foreign currency in which such foreign exchange is expressed:

Provided that the Central Government may, by the said notification or by a separate order, exempt any person or class of persons from the operation of the order made in the said notification:

Provided further that nothing in this section shall apply to any foreign exchange acquired by a person from an authorised dealer or from a money-changer and retained by him with the permission of the Reserve Bank for any purpose.

Duty of persons entitled to receive foreign exchange, etc.

15. (*1*) No person who has a right to receive any foreign exchange or to receive from a person resident outside India a payment in rupees shall, except with the general or special permission of the Reserve Bank, do or refrain from doing anything, or take or refrain from taking any action, which has the effect of securing—

(*a*) that the receipt by him of the whole or part of that foreign exchange or payment is delayed, or

(*b*) that the foreign exchange or payment ceases in whole or in part to be receivable by him.

(*2*) Where a person has failed to comply with the requirements of sub-section (*1*) in relation to any foreign exchange or payment in rupees, the Reserve Bank may give to him such directions as appear to be expedient for the purpose of securing the receipt of the foreign exchange or payment, as the case may be.

Power to regulate the uses, etc., of imported gold and silver.

16. The Central Government may, by notification in the Official Gazette, impose such conditions as it thinks necessary or expedient on the use or disposal of, or dealings in, gold and silver prior to, or at the time of, import into India.

Payment for exported goods.

17. (*1*) (*a*) The Central Government may, by notification in the Official Gazette, prohibit the taking or sending out by land, sea or air (hereafter in this section referred to as export) of all goods or of any goods or class of goods specified in the notification from India directly or indirectly to any place so specified unless the exporter furnishes to the prescribed authority a declaration in the prescribed form supported by such evidence as may be prescribed or so specified and true in all material particulars which, among others, shall include the amount representing—

(*i*) the full export value of the goods; or

(*ii*) if the full export value of the goods is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of the goods in the overseas market,

and affirms in the said declaration that the full export value of the goods (whether ascertainable at the time of export or not) has been, or will within the prescribed period be, paid in the prescribed manner.

(*b*) If a declaration referred to in clause (*a*) contains particulars which are false or which are not true, the declaration shall, for the purposes of this sub-section, be deemed not to have been made.

(c) If the Central Government is of the opinion that it is necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette, specify any goods, from among those goods to which a notification under clause (*a*) applies, and direct that in respect of the goods so specified, where an exporter makes a declaration under sub-clause (*ii*) of clause (*a*) of the value which he, having regard to the prevailing market conditions expects to receive on the sale of such goods in the overseas market, he shall not, except with the permission of the Reserve Bank on an application made to the Reserve Bank by the exporter in this behalf, authorise or permit or allow or in any manner be a party to, the sale of such goods for a value less than that declared:

Provided that no permission shall be refused by the Reserve Bank under this clause unless the exporter has been given a reasonable opportunity of being heard in the matter:

Provided further that where the exporter makes an application to the Reserve Bank for permission under this clause and the Reserve Bank does not, within a period of sixty days from the date of receipt of the application, communicate to the exporter that permission applied for has been refused, it shall be presumed that the Reserve Bank has granted such permission.

Explanation.—In computing the period of sixty days for the purposes of the second proviso, the period, if any, taken by the Reserve Bank for giving an opportunity to the exporter of being heard under the first proviso shall be excluded.

(2) Where any export of goods, to which a notification under clause (*a*) of sub-section (*1*) applies, has been made, no person shall, except with the permission of the Reserve Bank, do or refrain from doing anything, or take or refrain from taking any action, which has the effect of securing—

(*A*) in a case falling under sub-clause (*i*) or sub-clause (*ii*) of clause (*a*) of sub-section (*1*),—

(*a*) that payment for the goods—

(*i*) is made otherwise than in the prescribed manner, or

(*ii*) is delayed to an extent which is unreasonable having regard to the ordinary course of trade, or beyond the period prescribed under clause (*a*) of sub-section (*1*), whichever is earlier, or

(*b*) that the proceeds of sale of the goods exported do not represent the full export value of the goods subject to such deductions, if any, as may be allowed by the Reserve Bank; and

(*B*) in a case falling under sub-clause (*ii*) of clause (*a*) of sub-section (*1*), also that the sale of the goods is delayed to an extent which is unreasonable having regard to the ordinary course of trade, or beyond the period prescribed under that clause, whichever is earlier;

Provided that no proceedings in respect of any contravention of this sub-section shall be instituted unless the prescribed period has expired and payment for the goods representing the full export value has not been made in the prescribed manner within the prescribed period.

(*3*) Where in relation to any goods to which a notification under clause (*a*) of sub-section (*1*) applies the prescribed period has expired and payment therefor has not been made as aforesaid, it shall be presumed, unless the contrary is proved by the person who has sold or is entitled to sell the goods or to procure the sale thereof, that such person has not taken all reasonable steps to receive or recover the payment for the goods as aforesaid and he shall accordingly be presumed to have contravened the provisions of sub-section (*2*).

(*4*) Where in relation to any goods to which a notification under clause (*a*) of sub-section (*1*) applies the prescribed period has expired and payment therefor has not been made as aforesaid, the Reserve Bank may give to any person who has sold the goods or who is entitled to sell the goods or procure the sale thereof, such directions as appear to it to be expedient for the purpose of securing—

(*i*) if the goods have been sold, the payment therefor, or

(*ii*) if the goods have not been sold, either the sale of the goods and payment therefor as aforesaid or the re-import of the goods into India as the circumstances permit,

within such period as the Reserve Bank may specify in this behalf and without prejudice to the generality of the foregoing provision, may direct that the goods, the right to receive the payment therefor or any other right to enforce such payment shall be transferred or assigned to the Central Government or to a person specified in the directions.

(*5*) Where any goods or a right to receive payment or any other right to enforce such payment, are or is transferred or assigned in accordance with sub-section (*4*), the Central Government shall pay to the person transferring or assigning the same, the amount recovered by or on behalf of the Central Government in respect of the goods, after deducting all costs, charges and expenses incurred by the Central Government in selling the goods or in recovering or realising the amount in respect of such goods.

(*6*) Without prejudice to the provisions of sub-section (*1*), where the value of the goods specified in the declaration furnished under that sub-section is less than the amount which in the opinion of the Reserve Bank, in a case falling under sub-clause (*i*) of clause (*a*) of that sub-section, represents the full export value of those goods, or in a case falling under sub-clause (*ii*) of that clause, the value which the exporter can, having regard to the prevailing market conditions, expect to receive on the sale of the goods in the overseas market, the Reserve Bank may issue an order requiring the person holding the shipping documents to retain possession thereof until such time as the exporter of the goods has made arrangements for the Reserve Bank or a person authorised by the Reserve Bank to receive on behalf of the exporter payment in the prescribed manner of an amount which in the opinion of the Reserve Bank represents the full export value of such goods or the value which the exporter, having regard to the prevailing market conditions, can be expected to receive on the sale of the goods in the overseas market.

(7) For the purpose of ensuring compliance with the provisions of this section and any order or direction made thereunder, the Reserve Bank or the prescribed authority referred to in sub-section (1) may require any person making any export of goods to which a notification under clause (a) of that sub-section applies to exhibit contracts with his foreign buyer or other evidence to show that the full export value of the goods, or, as the case may be, the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of the goods in the overseas market, has been, or will within the prescribed period be, paid in the prescribed manner.

(8) Without prejudice to the provisions of sub-section (1), where the Reserve Bank has permitted any authorised dealer to accept for negotiation or collection of shipping documents covering exports from his constituent, [not being a person who has signed the declaration in terms of sub-section (1)] such authorised dealer shall, before accepting such documents for negotiation or collection, require the constituent concerned also to sign such declaration and thereupon such constituent shall be bound to comply with such requisition and the original declarant and such constituent signing the declaration shall each be considered to be the exporter for the purposes of this section, and shall be governed by the provisions thereof accordingly.

(9) Without prejudice to the provisions of sub-section (1), in relation to export of goods to which a notification under clause (a) of that sub-section applies, the Reserve Bank may, for the purpose of ensuring that the full export value of the goods or, as the case may be, the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of the goods in the overseas market, is received in proper time or without delay, by general or special order, direct from time to time, that in respect of export of goods to any destination or any class of export transactions or any class of goods or class of exporters, the exporter shall, prior to the export of the goods, comply with any or all of the following conditions as may be specified in the order, namely:—

(a) that any contract or other arrangement for the sale of the goods shall be registered in such manner and with such authority or organisation as may be specified in the order;

(b) that the payment for the goods is covered by an irrevocable letter of credit or by such other arrangement or document as may be specified in the order;

(c) that a copy of the declaration to be furnished to the prescribed authority under sub-section (1) shall be submitted to such authority or organisation as may be specified in the order for certifying that the value of the goods specified in such declaration represents the proper value thereof;

(d) that any declaration to be furnished to the prescribed authority under sub-section (1) shall be submitted to the Reserve Bank for its prior approval, which may, having regard to the circumstances, be given or withheld or may be given subject to such conditions as the Reserve Bank may deem fit to impose:

Provided that no approval shall be withheld by the Reserve Bank under this clause unless the exporter has been given a reasonable opportunity of being heard in the matter.

(*10*) Where the Central Government is of the opinion that, in respect of any goods or class of goods or class of exporters, or in respect of export to any destination, the practice of exporting goods in accordance with any term to the effect that the goods will be sold on account of the exporter and the account of such sales rendered to the exporter, has resulted or is likely to result in the full export value of the goods not being brought into India in the prescribed manner or within the prescribed period, it may, by general or special order, prohibit the export, in accordance with such term, of such goods or class of goods or by such exporters or to such destination.

Regulation of export and transfer of securities.

18. (*1*) Notwithstanding anything contained in section 81 of the Companies Act, 1956, no person shall, except with the general or special permission of the Reserve Bank,— 1 of 1956.

(*a*) take or send any security to any place outside India;

(*b*) transfer any security, or create or transfer any interest in a security, to or in favour of a person resident outside India;

(*c*) transfer any security from a register in India to a register outside India or do any act which is calculated to secure, or forms part of a series of acts which together are calculated to secure, the substitution for any security which is either in, or registered in, India, of any security which is either outside, or registered outside, India;

(*d*) issue, whether in India or elsewhere, any security which is registered or to be registered in India, to a person resident outside India;

(*e*) acquire, hold or dispose of any foreign security.

(*2*) Where the holder of a security is a nominee, neither he nor any person through whose agency the exercise of all or any of the holder's rights in respect of the security is controlled shall, except with the general or special permission of the Reserve Bank, do any act, whereby he recognises or gives effect to the substitution of another person as the person from whom he directly receives instructions, unless both the persons previously instructing and the person substituted for that person were, immediately before the substitution, resident in India.

(*3*) The Reserve Bank may, for the purpose of securing that the provisions of this section are not evaded, require that the person transferring any security and the person to whom such security is transferred shall subscribe to a declaration that the transferee is not resident outside India.

(*4*) Notwithstanding anything contained in any other law, no person shall, except with the permission of the Reserve Bank,—

(*a*) enter any transfer of securities in any register or book in which securities are registered or inscribed if he has any ground for suspecting that the transfer involves any contravention of the provisions of this section, or

(*b*) enter in any such register or book, in respect of any security, whether in connection with the issue or transfer of the security or otherwise, an address outside India except by way of substitution for any such address in the same country or for the purpose of any transaction for which permission has been granted under this section with knowledge that it involves entry of the said address, or

(*c*) transfer any share from a register outside India to a register in India.

(5) Notwithstanding anything contained in any other law, no transfer of any share of a company registered in India made by a person resident outside India or by a national of a foreign State to another person whether resident in India or outside India shall be valid unless such transfer is confirmed by the Reserve Bank on an application made to it in this behalf by the transferor or the transferee.

(6) For the purposes of this section,—

(*a*) "holder", in relation to a bearer security, means the person having physical custody of the security; provided that, where a bearer security is deposited with any person in a locked or sealed receptacle from which the person with whom it is deposited is not entitled to remove it without the authority of some other person, that other person shall be deemed to be the holder of the security;

(*b*) "nominee" means a holder of any security (including a bearer security) or any coupon representing dividends or interest who, as respects the exercise of any rights in respect of the security or coupon, is not entitled to exercise those rights except in accordance with instructions given by some other person, and a person holding a security or coupon as a nominee shall be deemed to act as nominee for the person who is entitled to give instructions either directly or through the agency of one or more persons, as to the exercise by the holder of the security or coupon of any rights in respect thereof and is not, in so doing, himself under a duty to comply with instructions given by some other person.

Restrictions on payment in respect of certain securities.

19. Notwithstanding anything contained in any other law or in any contract, agreement or other instrument, the holder of any Government security, as defined in the Public Debt Act, 1944, created and issued for the purpose of raising a public loan before the 15th day of August, 1947, in respect of which the principal or interest or both are for the time being payable outside India in any country or place notified in this behalf by the Central Government, shall not be entitled, except with the general or special permission of the Reserve Bank, to have any such payment made at any place in India. 18 of 1944.

Explanation.—In this section, "holder" shall have the same meaning as in clause (*a*) of sub-section (6) of section 18.

Custody of securities.

20. (1) The Central Government may, by notification in the Official Gazette, order every person by whom or on whose behalf a security or certificate of title to a security specified in the order is held in India to cause the said security or certificate of title to be kept in the custody of an authorised depository named in the order;

Provided that the Reserve Bank may, by order in writing, permit any such security to be withdrawn from the custody of the authorised depository subject to such conditions as may be specified in the order.

(2) No authorised depository may part with any security covered by an order under sub-section (1) without the general or special permission of the Reserve Bank except to, or to the order of, another authorised depository.

(3) Except with the general or special permission of the Reserve Bank, no authorised despository shall—

(a) accept or part with any security covered by an order under sub-section (1) whereby the security is transferred to the name of a person resident outside India, or

(b) do any act whereby he recognises or gives effect to the substitution of another person as the person from whom he directly receives instructions relating to such security unless the person previously so instructing him and the person substituted for that person were immediately before the substitution resident in India.

(4) Except with the general or special permission of the Reserve Bank, no person shall purchase, sell or transfer any security, or certificate of title to a security, covered by an order under sub-section (1) unless such security or certificate of title has been deposited in accordance with the order under sub-section (1).

(5) Except with the general or special permission of the Reserve Bank no capital moneys, interest or dividends in respect of any security covered by an order under sub-section (1) shall be paid in India except to or to the order of the authorised depository having the custody of the security.

(6) For the purposes of this section—

(a) "authorised depository" means a person notified by the Central Government to be entitled to accept the custody of securities and certificates of title to securities, and

(b) "security" includes coupons.

Restrictions on issue of bearer securities.

21. The Central Government may, by notification in the Official Gazette, order that except with the general or special permission of the Reserve Bank no person shall, in India, and no person resident in India shall, outside India, create or issue any bearer certificate or coupon or so alter any document that it becomes a bearer certificate or coupon.

Acquisition by Central Government of foreign securities.

22. (1) Subject to any exemptions that may be contained in the notification, the Central Government may, if it is of the opinion that it is expedient so to do for the purpose of strengthening its foreign exchange position, by notification in the Official Gazette,—

(a) order the transfer to itself of any foreign securities specified in the notification at a price so specified, being a price which, in the opinion of the Central Government, is not less than the market value of the securities on the date of the notification, or

(*b*) direct the owner of any foreign securities specified in the notification to sell or procure the sale of the securities and thereafter to offer or cause to be offered the net foreign exchange proceeds of the sale to the Reserve Bank on behalf of the Central Government or to such person as the Reserve Bank may authorise for the purpose, at such price as the Central Government may fix, being a price which, in the opinion of the Central Government, is not less than the market rate of the foreign exchange when it is offered for sale.

(*2*) On the issue of a notification under clause (*a*) of sub-section (*1*),—

(*a*) the securities to which the notification relates shall forthwith vest in the Central Government free from any mortgage, pledge or charge, and the Central Government may deal with them in such manner as it thinks fit;

(*b*) the owner of any of the securities to which the notification relates and any person who is responsible for keeping any registers or books in which any of those securities are registered or inscribed, or who is otherwise concerned with the registration or inscription of any of those securities, shall do all such things as are necessary or as the Central Government or the Reserve Bank may order to be done, for the purpose of securing that—

(*i*) the securities and any certificates of title relating thereto are delivered to the Central Government and, in the case of registered or inscribed securities, that the securities are registered or inscribed in the name of the Central Government or of such nominee of the Central Government as it may specify, and

(*ii*) any dividends or interest on those securities becoming payable on or after the date of the issue of the notification are paid to the Central Government or its nominee as aforesaid and where in the case of any security payable to bearer which is delivered in pursuance of the said notification, any coupons representing any such dividends or interest are not delivered with the security, such reduction in the price payable therefor shall be made as the Central Government thinks fit:

Provided that where the price specified in the notification in relation to any security is ex-dividend or ex-interest, this sub-clause shall not apply to that dividend or interest or to any coupon representing it.

(*3*) A certificate signed by any person authorised in this behalf by the Central Government that any specified securities are securities transferred to the Central Government under this section shall be treated by all persons concerned as conclusive evidence that the securities have been so transferred.

Restriction on settlement, etc.

23. No person resident in India shall, except with the general or special permission of the Reserve Bank, settle, or make a gift of, any property so that a person who at the time of the settlement or the making of the gift is resident outside India, elsewhere than in the territories notified in this behalf by the Reserve Bank, will have an interest in the property, or exercise any power for payment in favour of a person who

at the time of the exercise of the power is resident outside India elsewhere than in such notified territories:

Provided that any settlement or gift made or any power exercised as aforesaid without the permission of the Reserve Bank shall not be invalid merely on the ground that such permission has not been obtained.

Restriction on holding of immovable property outside India.

24. (*1*) No person resident in India shall, except with the permission of the Reserve Bank, acquire or hold or transfer or dispose of by sale, mortgage, lease, gift, settlement or otherwise, any immovable property situate outside India:

Provided that nothing in this sub-section shall apply to the acquisition or transfer of any such immovable property by way of lease for a period not exceeding five years.

(*2*) Any person resident in India and holding any immovable property outside India at the commencement of this Act shall, before the expiry of a period of three months from such commencement or such further period as the Reserve Bank may allow in this behalf, declare such holding to the Reserve Bank in such form and containing such particulars as may be specified by the Reserve Bank.

(*3*) Notwithstanding anything contained in this Act or in any other law for the time being in force, if the Central Government is satisfied that it is necessary or expedient in the public interest so to do, it may, by order, direct any person holding any immovable property outside India to sell the whole or any part of such property, subject to such terms and conditions as it may deem fit, and acquire the proceeds of such sale to be received in India through an authorised dealer.

Certain provisions as to companies.

25. (*1*) Where there is served on any person resident in India a notice in writing that the Central Government or the Reserve Bank wishes any such requirements as are hereafter mentioned to be complied with by any such company as is specified in *Explanation I* [hereafter in this sub-section and in sub-section (*2*) referred to as a foreign company] and that person can by doing or refraining from doing any act—

(*a*) cause the foreign company to comply with any of the requirements, or

(*b*) remove any obstacle to the foreign company complying with any of the requirements, or

(c) render it in any respect more probable that the foreign company will comply with any of the requirements,

then, except so far as permission to the contrary may be given by the Central Government or, as the case may be, by the Reserve Bank, that person shall do or, as the case may be, refrain from doing that act.

(*2*) The requirements with respect to which a notice under sub-section (*1*) may be given are as follows, that is to say, the foreign company shall—

(*i*) furnish to the Central Government or, as the case may be, to the Reserve Bank such particulars as to its assets and business as may be specified in the notice;

(*ii*) sell or procure the sale to an authorised dealer of any foreign exchange specified in the notice, being foreign exchange which it is entitled to sell or of which it is entitled to procure the sale;

(*iii*) declare and pay such dividend as may be specified in the notice;

(*iv*) realise any of its assets specified in the notice in such manner as may be so specified;

(*v*) refrain from selling or transferring or doing anything which affects its rights or powers in relation to any such instruments or securities as may be specified in the notice.

(*3*) Except with the general or special permission of the Reserve Bank, no person resident in India shall, in respect of any business outside India, in which the non-resident interest is forty-nine per cent. or less, do any act, whereby the non-resident interest in that business becomes more than forty-nine per cent.

(*4*) Notwithstanding anything contained in any other law, no transfer of an interest in any business in India made by a person resident outside India to any person also resident outside India shall be valid unless such transfer is confirmed by the Reserve Bank on an application made to it in this behalf by the transferor or the transferee.

(*5*) Except with the general or special permission of the Reserve Bank, no person resident in India shall transfer any interest in any business in India, or create any interest in such business, to or in favour of a person or company referred to in sub-section (*1*) of section 27.

(*6*) Except with the general or special permission of the Central Government, or the Reserve Bank, no person resident in India shall give a guarantee in respect of any debt or other obligation or liability—

(*i*) of a person resident in India, and due or owing to a person resident outside India, or

(*ii*) of a person resident outside India.

(*7*) Except with the general or special permission of the Reserve Bank—

(*i*) no person resident in India shall lend any money to, or deposit any money with, a firm or company (other than a banking company) in which the non-resident interest is forty per cent. or more; and

(*ii*) no firm or company (other than a banking company) in which the non-resident interest is forty per cent. or more shall borrow money from a person resident in India, or accept a deposit of money from such person.

Explanation I.—The companies referred to in sub-section (*1*) are companies not incorporated under any law in force in India in the case of which any of the following conditions is fulfilled:—

(*a*) that the company is by any means controlled, directly or indirectly, by persons resident in India, or

(*b*) that more than one-half of the sums which, on a liquidation thereof, would be receivable by holders of share or loan capital, would be receivable directly or indirectly by, or for the benefit of, persons resident in India; or

(*c*) that more than one-half of the assets which on a liquidation thereof, would be available for distribution after the payment to creditors, would be receivable directly or indirectly by, or for the benefit of, persons resident in India; or

(*d*) that more than one-half—

(*i*) of the interest payable on its loans and loan capital if any, or

(*ii*) of the dividends payable on its preference share capital, if any, or

(*iii*) of the dividends payable on its share capital, if any, not being preference share capital,

is receivable directly or indirectly by, or for the benefit of, persons resident in India.

Explanation II.—Where the identity of the persons by whom, or for whose benefit, any sum, assets, interest or dividends are directly or indirectly receivable depends on the exercise by any person resident in India of a power vested in him in that behalf, the sum, assets, interest or dividends shall, for the purposes of clause (*b*) of *Explanation I*, be deemed to be receivable directly or indirectly by, or for the benefit of, persons resident in India.

Explanation III.—For the purposes of this section and sections 26, 27 and 29, "non-resident interest" means participation in the capital or distributable surplus, either by any individual or company resident outside India, or by any company not incorporated under any law in force in India, or any branch of such company whether resident outside India or not.

Restrictions on the appointment of certain persons and companies as agents or technical or management advisers in India.

26. (*1*) Without prejudice to the provisions of section 44 and notwithstanding anything contained in any other provision of this Act or the Companies Act, 1956, a person resident outside India or a person who is not a national of India but is resident in India, or a company (other than a banking company) which is not incorporated under any law in force in India or in which the non-resident interest is forty per cent. or more, or any branch of such company, shall not, except with the general or special permission of the Reserve Bank, act, or accept appointment, as—

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(*a*) agent in India of any person or company, in the trading or commercial transactions of such person or company; or

(*b*) technical or management adviser in India of any person or company.

(*2*) Where any such person or company (including its branch) as is referred to in sub-section (*1*) acts or accepts appointment as such agent or technical or management adviser without the permission of the Reserve Bank, such acting or appointment, as the case may be, shall be void.

(*3*) Where any such person or company (including its branch) as is referred to in sub-section (*1*) acts as, or holds the appointment of, any such agent or technical or management adviser as is referred to in that sub-section at the commencement of this Act, such person or company (including its branch) shall, within a period of six months from such commencement or such further period as the Reserve Bank may allow in this behalf, make an application to the Reserve Bank in such form and containing such particulars as may be specified by the Reserve Bank for permission to continue to act, or to hold the appointment, as such.

(*4*) On receipt of an application under sub-section (*3*), the Reserve Bank may, after making such inquiry as it deems fit, either allow the application subject to such conditions, if any, as the Reserve Bank may think fit to impose, or reject the application:

Provided that no application shall be rejected under this sub-section unless the parties who may be affected by such rejection have been given a reasonable opportunity of being heard in the matter.

(*5*) Where any application has been rejected under sub-section (*4*), the acting or appointment shall be void on the expiry of a period of ninety days, or such other later date as may be specified by the Reserve Bank, from the date of receipt by the person or company (including its branch) concerned of the communication conveying such rejection.

(*6*) Where no application has been made under sub-section (*3*) by any such person or company (including its branch) as is referred to in sub-section (*1*), the Reserve Bank may, by order, direct such person or company (including its branch) to desist from such acting or appointment on the expiry of such period as may be specified in the direction:

Provided that no direction shall be made under this sub-section unless the parties who may be affected by such direction have been given a reasonable opportunity of being heard in the matter.

(*7*) Where any direction made under sub-section (*6*) has not been complied with by any person or company (including its branch), then, without prejudice to any action that may be taken under this Act, the acting or appointment shall be void with effect from the expiry of the period specified in the direction.

Explanation.—For the purposes of this section,—

(*a*) "agent" includes any person or company (including its branch) who or which buys any goods with a view to sell such goods before any processing thereof;

(*b*) "company" means any body corporate and includes a firm or other association of individuals;

(*c*) "processing" means any art or process for producing, preparing or making an article by subjecting any material to a manual, mechanical, chemical, electrical or any other like operation;

(*d*) "technical or management adviser" includes any person or company (including its branch) required to tender any technical or management advice, even though the tendering of such advice is incidental to any other services required to be rendered by such person or company.

Restrictions on establishment of place of business in India.

27. (*1*) Without prejudice to the provisions of section 26 and section 44 and notwithstanding anything contained in any other provision of this Act or the provisions of the Companies Act, 1956, a person resident outside India or a person who is not a national of India but is resident in India, or a company (other than a banking company) which is not incorporated under any law in force in India or in which the non-resident interest is forty per cent. or more or any branch of such company, shall not, except with the general or special permission of the Reserve Bank,— 1 of 1956.

(*a*) carry on in India, or establish in India a branch, office or other place of business for carrying on, any activity of a trading, commercial or industrial nature, other than an activity for the carrying on of which permission of the Reserve Bank has been obtained under section 26; or

(*b*) acquire the whole or any part of any undertaking in India of any person or company carrying on any trade, commerce or industry or purchase the shares in India of any such company.

(*2*) (*a*) Where any person or company (including its branch) referred to in sub-section (*1*) carries on any activity referred to in clause (*a*) of that sub-section at the commencement of this Act or has established a branch, office or other place of business for the carrying on of such activity at such commencement, then, such person or company (including its branch) may make an application to the Reserve Bank within a period of six months from such commencement or such further period as the Reserve Bank may allow in this behalf for permission to continue to carry on such activity or to continue the establishment of the branch, office or other place of business for the carrying on of such activity, as the case may be.

(*b*) Every application made under clause (*a*) shall be in such form and contain such particulars as may be specified by the Reserve Bank.

(*c*) Where any application has been made under clause (*a*), the Reserve Bank may, after making such inquiry as it may deem fit, allow the application subject to such conditions, if any, as the Reserve Bank may think fit to impose or reject the application:

Provided that no application shall be rejected under this clause unless the parties who may be affected by such rejection have been given a reasonable opportunity of being heard in the matter.

(*d*) Where an application is rejected by the Reserve Bank under clause (*c*), the person or company (including its branch) concerned shall discontinue to carry on such activity or close down the branch, office or other place of business established for the carrying on of such activity, as the case may be, on the expiry of a period of ninety days or such other later date as may be specified by the Reserve Bank from the date of receipt by such person or company (including its branch) of the communication conveying such rejection.

(*e*) Where no application has been made under clause (*a*) by any person or company (including its branch), the Reserve Bank may, by order, direct such person or company (including its branch) to discontinue the carrying on of such activity or to close down the branch, office or other place of business established for the carrying on of such activity, as the case may be, on the expiry of such period as may be specified in the direction:

Provided that no direction shall be made under this clause unless the parties who may be affected by such direction have been given a reasonable opportunity of being heard in the matter.

(3) (*a*) Where at the commencement of this Act any person or company (including its branch) referred to in sub-section (*1*) holds any shares in India of any company referred to in clause (*b*) of that sub-section, then, such person or company (including its branch) shall not be entitled to continue to hold such shares unless before the expiry of a period of six months from such commencement or such further period as the Reserve Bank may allow in this behalf such person or company (including its branch) has made an application to the Reserve Bank in such form and containing such particulars as may be specified by the Reserve Bank for permission to continue to hold such shares.

(*b*) Where an application has been made under clause (*a*), the Reserve Bank may, after making such inquiry as it may deem fit, either allow the application subject to such conditions, if any, as the Reserve Bank may think fit to impose or reject the application:

Provided that no application shall be rejected under this clause unless the parties who may be affected by such rejection have been given a reasonable opportunity of being heard in the matter.

(*c*) Where an application has been rejected under clause (*b*), or where no application has been made under clause (*a*), the Reserve Bank may, if it is of opinion that it is expedient so to do for the purpose of conserving the foreign exchange, direct such person or company (including its branch) to sell or procure the sale of, such shares:

Provided that no direction shall be made under this clause unless notice of such direction for a period of not less than ninety days has been given to the person or company to be affected by such direction.

Explanation.—For the purposes of this section, "company" has the same meaning as in clause (*b*) of the *Explanation* to section 26.

Restrfiction on employment of foreigners.

28. (*1*) No person shall, except with the general or special permission of the Reserve Bank, employ in India or abroad or continue the employment in India or abroad, of a national of a foreign State on payment of salary, wages, commission, honorarium or remuneration or compensation in whatever form and by whatever name called.

(*2*) Any employment made before the commencement of this Act for which permission under sub-section (*1*) would have been necessary if it were to be made after such commencement and continuing at such commencement shall, on the expiry of a period of ninety days from such commencement or such further period as the Reserve Bank may allow in this behalf, stand terminated, unless before the expiry of such period, the employer concerned makes an application to the Reserve Bank in such form and containing such particulars as may be specified by the Reserve Bank for permission for the continuance of such employment and the person whose employment stands so terminated shall be entitled to, and only to, such damages and on such basis as he would have been entitled to if his employment had been terminated in breach of the contract of employment.

(3) Where an application has been made under sub-section (2), the Reserve Bank may, after making such inquiry as it may deem fit, either allow or reject the application:

Provided that no application shall be rejected under this sub-section unless the parties who may be affected by such rejection have been given a reasonable opportunity of being heard in the matter.

(4) Where an application is rejected under sub-section (3), the employment shall stand terminated on the date of receipt by the employer of the communication conveying such rejection and the person whose employment stands terminated shall not be entitled to any damages or compensation for such termination or any other claim based on such termination.

(5) The Reserve Bank may, by notification in the Official Gazette, declare that subject to such conditions and restrictions, if any, as may be specified in the notification, the provisions of this section shall not apply to any person or class of persons or, as the case may be, to any employment or class of employment.

Explanation.—For the purposes of this section, a person shall be deemed to employ or continue the employment of a national of a foreign State on payment of salary, wages, commission, honorarium, remuneration or compensation, also in a case where such national is paid any salary, wages, commission, honorarium, remuneration or compensation by any person, company, firm or other association of individuals outside India on the undertaking given by the person for whom the services are rendered by such national that he or any other person shall compensate the person, company, firm or other association of individuals outside India, for such payment.

Restriction on acquisition, holding, etc. of immovable property in India.

29. (1) No person resident outside India or who is not a national of India but is resident in India or a company (other than a banking company) which is not incorporated under any law in force in India or in which the non-resident interest is forty per cent. or more shall, except with the permission of the Reserve Bank, acquire or hold or transfer or dispose of by sale, mortgage, lease, gift, settlement or otherwise any immovable property situate in India:

Provided that nothing in this sub-section shall apply to the acquisition or transfer of any such immovable property by way of lease for a period not exceeding five years.

(2) Any person or company referred to in sub-section (1) desiring to acquire or hold or transfer or dispose of by sale, mortgage, lease, gift, settlement or otherwise any immovable property situate in India may make an application to the Reserve Bank in such form and containing such particulars as may be specified by the Reserve Bank.

(3) On receipt of an application under sub-section (2), the Reserve Bank may, after making such inquiry as it deems fit, either grant or refuse to grant the permission applied for:

Provided that no permission shall be refused to be granted unless the applicant has been given a reasonable opportunity of being heard in the matter;

Provided further that if before the expiry of a period of ninety days from the date on which the application was received by the Reserve Bank, the Reserve Bank does not communicate to the applicant that the permission applied for has been refused, it shall be presumed that the Reserve Bank has granted such permission.

Explanation.—In computing the period of ninety days for the purposes of the second proviso, the period if any, taken by the Reserve Bank for giving an opportunity to the applicant of being heard under the first proviso shall be excluded.

(*4*) Every person and company referred to in sub-section (*1*) holding at the commencement of this Act any immovable property situate in India shall, before the expiry of a period of ninety days from such commencement or such further period as the Reserve Bank may allow in this behalf, make a declaration in such form as may be specified by the Reserve Bank regarding the immovable property or properties held by such person or company.

Regulation of booking of passages out side India and restrictions on foreign travels.

30. (*1*) No airline, shipping company, travel agent or other person shall carry on in India the business of booking passages for foreign travel unless such airline, shipping company, travel agent or other person, as the case may be, holds a valid licence granted in that behalf by the Reserve Bank.

(*2*) Any airline, shipping company, travel agent or other person desiring to carry on the business of booking passages for foreign travel may before the commencement of such business, make an application to the Reserve Bank in such form and containing such particulars as may be specified by the Reserve Bank.

(*3*) On receipt of an application under sub-section (*2*), the Reserve Bank may, having regard to the standing of the applicant in booking passages for foreign travel and such other factors as the Reserve Bank may consider fit in the circumstances of the case, grant, or refuse to grant, a licence:

Provided that no licence shall be refused to be granted under this sub-section unless the person affected thereby is given a reasonable opportunity of being heard in the matter.

(*4*) Every licence granted under sub-section (*3*) shall be for such period, and be subject to such conditions, as the Reserve Bank may specify in this behalf.

(*5*) Any licence granted under sub-section (*3*) or deemed to be granted under sub-section (*6*) may be revoked by the Reserve Bank at any time if the Reserve Bank is satisfied that the licensee has acted otherwise than in conformity with the provisions of this Act or of any rule, notification, order or direction made thereunder or has contravened any of the conditions of the licence:

Provided that no licence shall be revoked under this sub-section unless the person affected thereby is given a reasonable opportunity of being heard in the matter.

(*6*) Notwithstanding anything contained in sub-sections (*1*) to (*4*), where any permission has been granted under section 18B of the Foreign Exchange Regulation Act, 1947 by the Reserve Bank to any airline, shipping company or travel agent to book passage for any person for a jour- 7 of 1947.

ney, the whole or part of which is outside India, and such permission is valid at the commencement of this Act, then, such permission shall be deemed to be a licence granted under sub-section (*3*) in favour of such airline, shipping company or travel agent, as the case may be, for the unexpired portion of the period for which such permission has been granted or, where while granting such permission no period has been specified, for a period of three years from such commencement and thereafter, in either case, the provisions of sub-sections (*1*) to (*4*) shall apply to such airline, shipping company or travel agent accordingly.

(*7*) No airline, shipping company, travel agent or other person shall book a passage for any person for foreign travel unless the booking of such passage has been approved by the Reserve Bank on an application made to it in this behalf in such form and containing such particulars as may be specified by the Reserve Bank and signed by both the person intending to undertake such travel and the person intending to book the passage:

Provided that where the Reserve Bank is satisfied that there are good and sufficient reasons for dispensing with the signature in such application of the person intending to undertake such travel, it may dispense with such signature.

(*8*) On receipt of an application under sub-section (*7*), the Reserve Bank may, after making such inquiry as it deems fit, either allow the application subject to such conditions, if any, as the Reserve Bank may think fit to impose or reject the application:

Provided that no application shall be rejected under this sub-section unless the Reserve Bank is satisfied—

(*i*) that the foreign travel intended to be undertaken by such person involves or is likely to involve the meeting or defraying, in whole or in part, the cost or expenses of his stay outside India, otherwise than out of the foreign exchange acquired by him from an authorised dealer, or

(*ii*) that such travel involves or affects, or is likely to involve or affect, whether directly or indirectly, the accrual or expenditure of foreign exchange.

(*9*) No person shall, without the permission of the Reserve Bank,—

(*i*) remain outside India beyond the date or period; or

(*ii*) travel to any place outside India other than such place or places,

specified by the Reserve Bank in this behalf in his passport or on the permit for foreign exchange granted to him or on his application for booking the passage, as the case may be.

(*10*) If the Reserve Bank is satisfied that it is necessary or expedient in the public interest so to do, it may, by general or special order,—

(*i*) direct that nothing in sub-section (7) shall apply, or the provisions thereof shall apply subject to such restrictions and conditions, if any, as may be specified in the order, to any foreign travel or class of foreign travels as may be so specified;

(*ii*) exempt any person or class of persons from the operation of the provisions of sub-section (9) subject to such restrictions and conditions, if any, as may be specified in the order.

Explanation.—For the purposes of this section "foreign travel" means a travel, the whole or any part of which is outside India.

Power to call for information.

31. (*1*) The Central Government may, at any time by notification in the Official Gazette, direct the owners, subject to such exceptions, if any, as may be specified in the notification, of such foreign exchange or foreign securities or immovable properties held outside India as may be so specified, to submit a return, or from time to time returns, thereof to the Reserve Bank within such period, and giving such particulars, as may be so specified.

(*2*) Where for the purposes of this Act the Central Government or the Reserve Bank or any officer of Enforcement, not below the rank of a Chief Enforcement Officer, considers it necessary or expedient to obtain and examine any information, book or other document in the possession of any person or which in the opinion of the Central Government or the Reserve Bank or such officer it is possible for such person to obtain and furnish, the Central Government or the Reserve Bank or, as the case may be, such officer may, by order in writing, require any such person (whose name shall be specified in the order) to furnish, or to obtain and furnish, to the Central Government or the Reserve Bank or such officer or any person specified in the order with such information, book or other document and thereupon such person shall be bound to comply with such requisition.

Explanation.—For the purposes of this section, section 32 and sections 34 to 38 (both inclusive), "document" includes Indian currency, foreign exchange and books of account.

Power to search suspected persons and to seize documents.

32. (*1*) If any officer of Enforcement authorised in this behalf by the Central Government, by general or special order, has reason to believe that any person has secreted about his person or in any baggage under his possession, ownership or control any documents which will be useful for or relevant to any proceeding under this Act, he may search that person or such baggage and seize such documents.

(*2*) When any officer of Enforcement is about to search any person under the provisions of this section, the officer of Enforcement shall, if such person so requires, take such person without unnecessary delay to the nearest gazetted officer of Enforcement superior in rank to him or a magistrate.

(*3*) If such requisition is made, the officer of Enforcement may detain the person making it until he can bring him before the gazetted officer of Enforcement or the magistrate referred to in sub-section (*2*).

(*4*) The gazetted officer of Enforcement or the magistrate before whom any such person is brought shall, if he sees no reasonable ground for

search, forthwith discharge the person but otherwise shall direct that search be made.

(5) Before making a search under the provisions of this section, the officer of Enforcement shall call upon two or more persons to attend and witness the search and may issue an order in writing to them or any of them so to do; and the search shall be made in the presence of such persons and a list of all documents seized in the course of such search shall be prepared by such officer and signed by such witnesses.

(6) No female shall be searched by any one excepting a female.

Power to arrest.

33. (*1*) If any officer of Enforcement authorised in this behalf by the Central Government, by general or special order, has reason to believe that any person in India or within the Indian customs waters has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(*2*) Every person arrested under sub-section (*1*) shall, without unnecessary delay, be taken to a magistrate.

(*3*) Where any officer of Enforcement has arrested any person under sub-section (*1*) for any offence punishable under sub-section (2) of section 41 or under section 51 or under section 52, he shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police station has, and is subject to, under the Code of Criminal Procedure, 1898.

5 of 1898.

Power to stop and search conveyances.

34. If an officer of Enforcement authorised in this behalf by the Central Government, by general or special order, has reason to believe that any aircraft, vehicle or animal in India or any vessel in India or within the Indian customs waters has been, is being, or is about to be, used in the commission of an offence under this Act, or that any document which will be useful for or relevant to any proceeding under this Act is secreted therein, he may at any time stop any such vehicle or animal or vessel or, in the case of an aircraft, compel it to land and—

(*a*) rummage and search any part of the aircraft, vehicle or vessel;

(*b*) examine and search any goods in the aircraft, vehicle or vessel or on the animal;

(*c*) seize any such document as is referred to above;

(*d*) break open the lock of any door or package for exercising the powers conferred by clauses (*a*), (*b*) and (*c*), if the keys are withheld.

Power to search premises.

35. (*1*) If an officer of Enforcement, not below the rank of an Assistant Director of Enforcement, has reason to believe that any documents which, in his opinion, will be useful for or relevant to any investigation or proceeding under this Act, are secreted in any place he may authorise any officer of Enforcement to search for and seize or may himself search for and seize such documents.

(2) The provisions of the Code of Criminal Procedure, 1898, relating to searches, shall, so far as may be, apply to searches under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the words "Director of Enforcement or other officer exercising his powers" were substituted. 5 of 1898.

Power to examine persons

36. The Director of Enforcement or any other officer of Enforcement authorised in this behalf by the Central Government, by general or special order, may, during the course of any inquiry in connection with any offence under this Act,—

(a) require any person to produce or deliver any document relevant to the inquiry;

(b) examine any person acquainted with the facts and circumstances of the case.

Power to summon persons, to give evidence and produce documents.

37. (1) Any gazetted officer of Enforcement shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document in any inquiry which such officer is making in connection with any offence under this Act.

(2) A summons to produce documents may be for the production of certain specified documents or for the production of all documents of a certain description in the possession or under the control of the person summoned.

(3) All persons so summoned shall be bound to attend either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents as may be required:

Provided that the exemption under section 132 of the Code of Civil Procedure, 1908, shall be applicable to any requisition for attendance under this section. 5 of 1908.

(4) Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code. 45 of 1860.

Custody of documents, etc.

38. Where in pursuance of an order made under sub-section (2) of section 31 or of the provisions of section 32 or section 34 or section 35 or of a requisition or summons under section 36 or section 37, any document is furnished or seized and the Director of Enforcement or any other officer of Enforcement has reason to believe that the said document would be evidence of the contravention of any of the provisions of this Act or of any rule, direction or order made thereunder, and that it would by necessary to retain the document in his custody, he may so retain the said document for a period not exceeding one year or if, before the expiry of the said period of one year, any proceedings—

(i) under section 47 have been commenced before him, until the disposal of those proceedings, including the proceedings, if any, before the Appellate Board and the High Court, or

(*ii*) under section 50 have been commenced before a court, until the document has been filed in the court.

Explanation.—In computing the period of one year during which a document (hereafter in this *Explanation* referred to as the said document) may be retained under this section, in any case where by reason of an injunction or order of any court (whether such injunction or order is in relation to the said document or is in relation to any other document reference to which would be necessary for examining or using the said document),—

(*a*) the said document could not be examined fully for the purpose of determining whether it would be evidence of the contravention of any of the provisions of this Act or of any rule direction or order made thereunder, or

(*b*) the said document could not be used for commencing any proceedings under section 47 or section 50, or

(c) the proceedings under section 47 or section 50 could not be commenced,

the time of the continuance of the injunction or order, the day on which it was issued or made and the day on which it was withdrawn, shall be excluded.

Encashment of seized cheques, drafts, etc.

39. (*1*) The Director of Enforcement or any other officer of Enforcement not below the rank of an Assistant Director of Enforcement authorised by the Central Government in this behalf, during the investigation of any alleged contravention of any of the provisions of this Act or of any rule, direction or order made thereunder or during the pendency of any proceeding under section 47 or the court, during the pendency of any proceeding under section 50, on an application made in this behalf by the Director of Enforcement, may, by order, direct that any draft, cheque (including traveller's cheque) or other instrument in the custody of the Director of Enforcement or such other officer of Enforcement or, as the case may be, of the court and being the subject-matter of such contravention or, as the case may be, of such proceeding, be encashed either through the Reserve Bank or such other agency as he or it deems fit.

(2) Any proceeds realised in pursuance of a direction under sub-section (*1*) shall be kept in a separate account to be maintained by the prescribed authority in the prescribed manner.

(*3*) Where a direction is made under section 56 to confiscate any draft, cheque (including traveller's cheque) or other instrument the proceeds of which have been realised under sub-section (*1*), such proceeds shall vest in the Central Government and in all other cases such proceeds, without any interest thereon or other compensation for the money having been withheld, shall, within a reasonable period, be paid to such person as may appear to the Director of Enforcement or such other officer of Enforcement or the court to be entitled thereto and in such currency and in such manner as he or it deems just:

Provided that nothing in this sub-section shall affect the liability of any person, who may receive the whole or any part of the proceeds, to pay the same to the person lawfully entitled thereto.

Inspection.

40. (*1*) Any officer of Enforcement not below the rank of an Assistant Director of Enforcement specially authorised in writing by the Director of Enforcement in this behalf, or any officer of the Reserve Bank specially authorised in writing by the Reserve Bank in this behalf, may inspect the books and accounts and other documents of any authorised dealer.

(*2*) It shall be the duty of every authorised dealer and, where the authorised dealer is a company or a firm, of every director, partner or other officer of the authorised dealer to produce to any officer making an inspection under sub-section (*1*) all such books, accounts and other documents in his custody or power and to furnish him with any statement or information relating to the affairs of the authorised dealer as the said officer may require of him within such time as the said officer may specify.

(*3*) Any person making an inspection under sub-section (*1*) may examine on oath any authorised dealer or his agent or, where the authorised dealer is a company or a firm, any director, partner or other officer of the authorised dealer in relation to its business.

(*4*) If any person fails to produce any book, account or other document or to furnish any statement or information relating to the authorised dealer which, under sub-section (*2*), it is his duty to produce or furnish, or to answer any question relating to the business of the authorised dealer which he is asked by an officer making an inspection under this section, he shall be deemed to have contravened the provisions of this Act.

(*5*) The provisions of this section shall, so far as may be, apply in relation to a money-changer and to a person to whom a licence has been granted or deemed to have been granted under section 30 as they apply in relation to an authorised dealer.

Prohibition of disclosure documents or information except in certain cases.

41. (*1*) If in the course of any inquiry under this Act the Director of Enforcement or any other officer of Enforcement not below the rank of an Assistant Director of Enforcement is of the opinion that the contents of any documents in his possession or control would be useful for, or relevant to, any proceeding which is in progress or may be started under any other law for the time being in force, he may disclose such document or any information contained therein as he thinks fit to an officer duly authorised by or under such other law.

(*2*) If any officer of Enforcement, except in the discharge in good faith of his duty as such officer in accordance with sub-section (*1*), or in compliance with any requisition made under any law for the time being in force, discloses any document or information obtained by him in his official capacity in the course of any inquiry under this Act, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

LEGISLATIVE COUNSEL

1. Shri S. K. Maitra, *Joint Secretary and Legislative Counsel, Ministry of Law and Justice.*

2. Shri S. Ramaiah, *Deputy Legislative Counsel, Ministry of Law and Justice.*

REPRESENTATIVES OF THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE AND INSURANCE)

1. Shri M. R. Yardi, *Secretary (Expenditure).*
2. Shri A. Rajagopalan, *O.S.D. & Additional Secretary.*
3. Shri M. K. Venkateshan, *Joint Secretary.*
4. Shri C. S. Anantapadmanabhan, *Controller of Insurance.*
5. Shri R. K. Mahajan, *Deputy Secretary.*

SECRETARIAT

Shri P. K. Patnaik—*Joint Secretary.*

Shri H. G. Paranjpe—*Deputy Secretary.*

REPORT OF THE JOINT COMMITTEE

I, the Chairman of the Joint Committee to which the Bill* to provide for the acquisition and transfer of shares of Indian Insurance Companies and Undertakings of other existing insurers in order to serve better the needs of the economy by securing the development of general insurance business in the best interests of the community and to ensure that the operation of the economic system does not result in the concentration of wealth to the common detriment, for the regulation and control of such business and for matters connected therewith or incidental thereto, was referred, having been authorised to submit the report on their behalf, present their Report with the Bill, as amended by the Committee, annexed thereto.

2. The Bill was introduced in Lok Sabha on the 29th May, 1972. A motion for suspension of the first proviso to Rule 74 of the Rules of Procedure and Conduct of Business in Lok Sabha in its application to the motion for reference of the Bill to a Joint Committee of the Houses was moved in Lok Sabha by Shri Y. B. Chavan, Minister of Finance on the 30th May, 1972 and was adopted.

Thereafter, the motion for reference of the Bill to a Joint Committee of the Houses was moved in Lok Sabha by Shri Y. B. Chavan, Minister of Finance on the 30th May, 1972 and was adopted.

3. Rajya Sabha concurred in the said motion on the 1st June, 1972.

4. The message from Rajya Sabha was published in Lok Sabha Bulletin Part II, dated the 2nd June, 1972.

5. The Committee held nine sittings in all.

6. The first sitting of the Committee was held on the 19th June, 1972 to draw up their programme of work. The Committee decided that associations, organisations, companies, Chambers of Commerce & Industry, and individuals interested in the subject matter of the Bill and desirous of submitting memoranda thereon for the consideration of the Committee might do so by the 10th July, 1972. The Committee also decided that out of those associations, organisations, etc. who may send their memoranda, the Chairman might select a few and invite them to give oral evidence before the Committee on the 17th, 18th and 19th July, 1972.

7. 46 Memoranda on the Bill were received by the Committee from various associations, organisations etc.

*Published in the Gazette of India, Extraordinary, Part II, Section 2, dated the 29th May, 1972.

in the prescribed manner after giving that person a reasonable opportunity of being heard and if, on such inquiry, he is satisfied that the person has committed the contravention, he may impose such penalty as he thinks fit in accordance with the provisions of that section.

(2) While holding an inquiry under this section, the adjudicating officer shall have power to summon and enforce the attendance of any person to give evidence or to produce a document or any other thing which, in the opinion of the adjudicating officer, may be useful for, or relevant to, the subject-matter of the inquiry.

Appeal to Appellate Board.

48. (1) **The Central Government may, by notification in the Official Gazette, constitute an Appellate Board to be called the Foreign Exchange Regulation Appellate Board consisting of a Chairman and such number of other members, not exceeding four, to be appointed by the Central Government for hearing appeals against the orders of the adjudicating officer made under section 47.**

(2) Any person aggrieved by such order may, after depositing the sum imposed by way of penalty under section 46 and within forty-five days from the date on which the order is sent to the person committing the contravention, prefer an appeal to the Appellate Board:

Provided that the Appellate Board may entertain the appeal after the expiry of the said period of forty-five days if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal in time:

Provided further that where the Appellate Board is of opinion that the deposit to be made will cause undue hardship to the appellant, it may, in its own discretion, dispense with such a deposit either unconditionally or subject to such conditions as it may deem fit.

(3) On receipt of an appeal under sub-section (2), the Appellate Board may, after calling for a report from the adjudicating officer and after making such further inquiry as it deems fit, confirm, modify or set aside the order appealed against and the decision of the Appellate Board shall, subject to the provisions of section 49, be final and if the sum deposited by way of penalty under sub-section (2) exceeds the amount directed to be paid by the Appellate Board, the excess amount shall be refunded.

(4) The Appellate Board may call for the records of any proceeding in which the adjudicating officer has made an order under section 47 and make such order in the case as it thinks fit.

(5) No order of the adjudicating officer made under section 47 shall be varied by the Appellate Board so as to prejudicially affect any person without giving such person a reasonable opportunity of being heard; and subject thereto, the Appellate Board shall follow such procedure, in respect of the proceedings before it, as may be prescribed.

(6) The powers and functions of the Appellate Board may be exercised and discharged by Benches consisting of two members and constituted by the Chairman of the Appellate Board:

Provided that if the members of the Bench differ on any point or points they shall state the point or points on which they differ and refer

the same to the third member for hearing on such point or points and such point or points shall be decided according to the opinion of that member.

(7) Any member of the Appellate Board authorised in this behalf by the Central Government may, sitting singly, dispose of any appeal which has been allotted to the Bench of which he is a member if the amount of penalty imposed by the order against which the appeal has been preferred does not exceed fifty thousand rupees.

Appeal to High Court.

49. An appeal shall lie to the High Court only on questions of law from any decision or order of the Appellate Board under sub-section (3) or sub-section (4) of section 48:

Provided that the High Court shall not entertain any appeal under this section if it is filed after the expiry of sixty days of the date of communication of the decision or order of the Appellate Board, unless the High Court is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

Offences and prosecutions.

50. (1) Without prejudice to any award of penalty by the adjudicating officer under this Act, or to any award of penalty under the Customs Act, 1962, if any person contravenes, whether knowingly, intentionally or otherwise, any of the provisions of this Act [other than sub-section (2) of section 41 and sections 51 and 52] or of any rule, direction or order made thereunder, he shall, upon conviction by a court, be punishable,— 52 of 1962.

(*i*) in the case of an offence the amount or value involved in which exceeds one lakh of rupees, with imprisonment for a term which shall not be less than six months, but which may extend to seven years and with fine:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months;

(*ii*) in any other case, with imprisonment for a term which may extend to three years or with fine or with both.

(2) If any person convicted of an offence under this Act [not being an offence under sub-section (2) of section 41 or section 51 or section 52] is again convicted of an offence under this Act [not being an offence under sub-section (2) of section 41 or section 51 or section 52], he shall be punishable for the second and for evrey subsequent offence with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

(3) Where a person having been convicted of an offence under this Act [not being an offence under sub-section (2) of section 41 or section 51 or section 52] is again convicted of an offence under this Act [not being

an offence under sub-section (2) of section 41 or section 51 or section 52], the court by which such person is convicted may, in addition to any sentence or penalty which may be imposed on him under this section, by order, direct that that person shall not carry on such business as the court may specify, being a business which is likely to facilitate the commission of such offence, for such period not exceeding three years, as may be specified by the court in the order.

(4) For the purposes of sub-sections (1) and (2), the following shall not be considered as adequate and special reasons for awarding a sentence of imprisonment for a term of less than six months, namely:—

(*i*) the fact that the accused has been convicted for the first time of an offence under this Act;

(*ii*) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods in relation to such proceedings have been ordered to be confiscated or any other penal action has been taken against him for the same offence;

(*iii*) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party in the commission of the offence;

(*iv*) the age of the accused.

(5) For the purposes of sub-sections (1) and (2), the fact that an offence under this Act has caused no substantial harm to the general public or to any individual shall be an adequate and special reason for awarding a sentence of imprisonment for a term of less than six months.

(6) Nothing in the first proviso to section 188 of the Code of Criminal Procedure, 1898 shall apply to any offence punishable under this section. 5 of 1898.

51. If any person fails to pay the penalty imposed by the adjudicating officer or the Appellate Board or the High Court or fails to comply with any of his or its directions or orders, he shall, upon conviction by a court, be punishable with imprisonment for a term which may extend to two years or with fine or with both. **Penalty for contravention of order made by adjudicating officer, Appellate Board and High Court.**

52. (1) Any officer of Enforcement exercising powers under this Act or any rule made thereunder who,— **Vexatious search, etc., by officers of Enforcement.**

(*a*) without reasonable ground of suspicion, searches or causes to be searched any place, premises, aircraft, vehicle or vessel; or

(*b*) vexatiously or unnecessarily detains or searches or arrests any person; or

(c) commits, as such officer of Enforcement, any other act to the injury of any person, without reason to believe that such act is required for the execution of his duty,

shall, for every such offence, upon conviction by a court, be punishable with fine which may extend to two thousand rupees.

(2) Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall, upon conviction by a court, be punishable with imprisonment for a term which may extend to two years or with fine which may extend to two thousand rupees or with both.

Power to tender immunity from prosecution.

53. (1) The Central Government may, if it is of opinion (the reasons for such opinion being recorded in writing) that with a view to obtaining the evidence of any person appearing to have been directly or indirectly concerned in or privy to the contravention of any of the provisions of this Act or of any rule, direction or order made thereunder, it is necessary or expedient so to do, tender to such person immunity from prosecution for any offence under this Act or under the Indian Penal Code, or under any other Central Act for the time being in force and also from the imposition of any penalty under this Act on condition of his making a full and true disclosure of the whole circumstances relating to such contravention. 45 of 1860

(2) A tender of immunity made to, and accepted by, the person concerned, shall, to the extent to which the immunity extends, render him immune from prosecution for any offence in respect of which tender was made or from the imposition of any penalty under this Act.

(3) If it appears to the Central Government that any person to whom immunity has been tendered under this section has not complied with the condition on which the tender was made or is wilfully concealing anything or is giving false evidence, the Central Government may record a finding to that effect, and thereupon the immunity shall be deemed to have been withdrawn and such person may be tried for the offence in respect of which the tender of immunity was made or for any other offence of which he appears to have been guilty in connection with the same matter and shall also become liable to the imposition of any penalty under this Act to which he would otherwise have been liable.

Cognizance of offences.

54. (1) Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, it shall be lawful for any magistrate of the first class and for any presidency magistrate to pass a sentence of imprisonment for a term exceeding two years or of fine exceeding two thousand rupees on any person convicted of an offence punishable under section 50. 5 of 1898.

(2) No court shall take cognizance—

(i) of any offence punishable under sub-section (2) of section 41 or sub-section (1) of section 52,—

(a) where the offence is alleged to have been committed by an officer of Enforcement not lower in rank than an Assistant Director of Enforcement, except with the previous sanction of the Central Government;

(b) where the offence is alleged to have been committed by an officer of Enforcement lower in rank than an Assistant Director of Enforcement, except with the previous sanction of the Director of Enforcement; or

(*ii*) of any offence punishable under section 50 or section 51, except upon complaint in writing made by—

(*a*) the Director of Enforcement; or

(*b*) any officer authorised in writing in this behalf by the Director of Enforcement or the Central Government; or

(c) any officer of the Reserve Bank authorised by the Reserve Bank by a general or special order:

Provided that where any such offence is the contravention of any of the provisions of this Act or of any rule, direction or order made thereunder which prohibits the doing of an act without permission, no such complaint shall be made unless the person accused of the offence has been given an opportunity of showing that he had such permission.

Certain offences to be non-cognizable.

5 of 1898.

55. Subject to the provisions of section 42 and notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence punishable under section 50 shall be deemed to be non-cognizable within the meaning of that Code.

Confiscation of currency, security, etc.

56. Any court trying a contravention under section 50 and the adjudicating officer adjudging any contravention under section 47 may, if it or he thinks fit and in addition to any sentence or penalty which it or he may impose for such contravention, direct that any currency, security, gold or silver or goods or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government and further direct that the foreign exchange holdings, if any, of the person committing the contravention or any part thereof, shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf.

Explanation.—For the purposes of this section, property in respect of which contravention has taken place shall include—

(*a*) deposits in a bank, where the said property is converted into such deposits;

(*b*) Indian currency, where the said property is converted into that currency;

(c) any other property which has resulted out of the conversion of that property.

Preparation, attempt, etc.

57. (*1*) Whoever makes preparation to contravene any of the provisions of this Act [other than sub-section (*2*) of section 41 and sections 51 and 52] or of any rule, direction or order made thereunder and from the circumstances of the case it may be reasonably inferred that if not prevented by circumstances independent of his will, the contravention as aforesaid would have taken place, shall, for the purposes of section 50, be deemed to have contravened that provision, rule, direction or order, as the case may be.

(*2*) Whoever attempts to contravene, or abets any contravention of, any of the provisions of this Act [other than sub-section (*2*) of section 41

and sections 51 and 52] or of any rule, direction or order made thereunder, shall, for the purposes of this Act, be deemed to have contravened that provision, rule, direction or order, as the case may be.

Correction of clerical errors, etc.

58. Clerical or arithmetical mistakes in any decision or order passed by the Appellate Board or the adjudicating officer under this Act, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Appellate Board or the adjudicating officer or his successor in office, as the case may be:

Provided that where any correction proposed to be made under this section will have the result of prejudicially affecting any person no such correction shall be made—

(*i*) after the expiry of a period of two years from the date of such decision or order; and

(*ii*) unless the person affected thereby is given a reasonable opportunity of being heard in the matter.

Application of section 562 of the Code of Criminal Procedure, 1898 and of the Probation of Offenders Act, 1958.

59. (*1*) Nothing contained in section 562 of the Code of Criminal Procedure, 1898, or in the Probation of Offenders Act, 1958 shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age. 5 of 1898. 20 of 1958.

(*2*) The provisions of sub-section (*1*) shall have effect notwithstanding anything contained in sub-section (*4*) of section 50.

Application of the Customs Act, 1962.

60. Without prejudice to the provisions of section 46 or section 50 or to any other provision contained in this Act, the restrictions imposed by or under section 13, clauses (*a*) and (*b*) of sub-section (*1*) of section 17 and clause (*a*) of sub-section (*1*) of section 18 shall be deemed to have been imposed under section 11 of the Customs Act, 1962, and all the provisions of that Act shall have effect accordingly. 52 of 1962.

Offences by companies.

61. (*1*) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(*2*) Notwithstanding anything contained in sub-section (*1*), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, mtnager,

secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(*i*) "company" means any body corporate and includes a firm or other association of individuals; and

(*ii*) "director", in relation to a firm, means a partner in the firm.

Power of court to publish name, place of business, etc., of companies convicted under the Act.

62. (*1*) Where any company is convicted under this Act for contravention of any of the provisions thereof or of any rule, direction or order made thereunder, it shall be competent for the court convicting the company to cause the name and place of business of the company, nature of the contravention, the fact that the company has been so convicted and such other particulars as the court may consider to be appropriate in the circumstances of the case, to be published at the expense of the company in such newspapers or in such other manner as the court may direct.

(*2*) No publication under sub-section (*1*) shall be made until the period for preferring an appeal against the orders of the court has expired without any appeal having been preferred, or such an appeal, having been preferred, has been disposed of.

(*3*) The expenses of any publication under sub-section (*1*) shall be recoverable from the company as if it were a fine imposed by the court.

Explanation.—For the purposes of this section, "company" has the same meaning as in clause (*i*) of the *Explanation* to section 61.

Recovery of sums due to Government.

63. (*1*) Where any penalty imposed on any person under this Act is not paid,—

(*i*) the adjudicating officer may deduct the amount so payable from any money owing to such person which may be under the control of any officer of Enforcement; or

(*ii*) the adjudicating officer may recover the amount so payable by detaining or selling any goods belonging to such person which are under the control of any officer of Enforcement; or

(*iii*) if the amount cannot be recovered from such person in the manner provided in clause (*i*) or clause (*ii*), the adjudicating officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector on receipt of such certificate shall proceed to recover from the said person the amount specified thereunder as if it were an arrear of land revenue.

(*2*) Where the terms of any bond or other instrument executed under this Act or any rule made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (*1*), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.

(*3*) The several modes of recovery specified in this section shall not affect in any way—

(*i*) any other law for the time being in force relating to the recovery of debts due to Government; or

(*ii*) the right of the Government to institute a suit for the recovery of the penalty due to the Government,

and it shall be lawful for the Central Government to have recourse to any such law or suit notwithstanding that the amount is to be recovered by any mode specified in this section.

Burden of proof in certain cases.

64. (*1*) Where any person is prosecuted or proceeded against for contravening any of the provisions of this Act or of any rule, direction or order made thereunder which prohibits him from doing an act without permission, the burden of proving that he had the requisite permission shall be on him.

(*2*) Where any person is prosecuted or proceeded against for contravening the provisions of sub-section (*3*) of section 8, the burden of proving that the foreign exchange acquired by such person has been used for the purpose for which permission to acquire it was granted shall be on him.

(*3*) If any person is found or is proved to have been in possession of any foreign exchange exceeding in value two hundred and fifty rupees, the burden of proving that the foreign exchange came into his possession lawfully shall be on him.

Presumption as to documents in certain cases.

65. Where any document is furnished by any person under sub-section (*2*) of section 31, section 36 or section 37 or has been seized under section 32 or section 34 or section 35 from the custody or control of any person and such document is tendered in evidence against him, the court or the adjudicating officer shall, unless the contrary is proved, presume—

(*a*) the truth of the contents of such document;

(*b*) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court or the adjudicating officer may reasonably assume to have been signed by, or to be in the handwriting of, any particular person is in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

Supplemental provisions.

66. (*1*) For the purposes of this Act and of any rules, directions or orders made thereunder—

(*a*) in the case of any person who, having been resident in India, ceases to be such, the Reserve Bank may, by order, declare the territory in which such person shall be treated as being resident;

(*b*) in the case of any person resident in India who leaves India, the Reserve Bank may give a direction to any bank that until the direction is revoked, any sum, from time to time, standing to the credit of that person and any security held on his behalf at any office or branch of that bank in India specified in the direction shall not be dealt with except with the permission of the Reserve Bank;

(*c*) a firm or the branch of a firm shall be treated in all respects as if such firm or branch were a body corporate resident where it is situated;

(*d*) subject to the provisions of clause (*c*), a branch of any business, whether carried on by a body corporate or otherwise, shall be treated in all respects as if the branch were a body corporate resident where the branch is situated;

(*e*) the making of any book entry or other statement regarding a debit against a branch of any business in favour of the head office or any other branch of that business shall be treated as the acknowledgment of a debt whereby a right is created in favour of a person resident where the head office or other branch is situated.

(*2*) Nothing in this Act relating to the payment of any price or sum by the Central Government shall be construed as requiring the Central Government to pay that price or sum otherwise than in Indian currency or otherwise than in India.

(*3*) The Reserve Bank may give directions in regard to the making of payment and the doing of other acts by bankers, authorised dealers, money-changers, stock brokers, persons referred to in sub-section (*1*) of section 30 or other persons, who are authorised by the Reserve Bank to do anything in pursuance of this Act in the course of their business, as appear to it to be necessary or expedient for the purpose of securing compliance with the provisions of this Act and of any rules, directions or orders made thereunder.

(*4*) Subject to any other express provision in this behalf contained in this Act, where any provision of this Act requires the permission of the Reserve Bank for doing anything under such provision, the Reserve Bank may specify the form in which an application for such permission shall be made and the particulars which such application shall contain:

Provided that different forms and different particulars may be specified in respect of applications for permission under different provisions of this Act.

Delegation.

67. The Reserve Bank may, with the previous approval of the Central Government, by order, delegate any of its powers or functions—

(*i*) under section 8, 9, 10 or 11 or sub-clause (*b*) of clause (*A*) of sub-section (*2*) of section 17 or sub-section (*7*) of section 17 to any authorised dealer; or

(*ii*) under section 8 or 9 to any money-changer,

subject to such restrictions, conditions and limitations as may be specified in the order.

Power of Central Government to give direction.

68. For the purposes of this Act, the Central Government may, from time to time, give to the Reserve Bank such general or special directions as it thinks fit, and the Reserve Bank shall, in the discharge of its functions under this Act, comply with any such directions.

Certain officers to assist officers of Enforcement.

69. The following officers are hereby empowered and required to assist the officers of Enforcement in the enforcement of this Act, namely:—

(*a*) officers of the Customs Department;

(*b*) officers of the Central Excise Department;

(*c*) officers of Police;

(*d*) officers of the Central or State Government employed at any port or airport;

(*e*) such other officers of the Central or State Government or a local authority as are specified by the Central Government in this behalf by notification in the Official Gazette.

Bar of legal proceedings.

70. No suit, prosecution or other legal proceedings shall lie against any person for anything in good faith done or intended to be done under this Act or any rule, direction or order made thereunder.

Power to make rules.

71. (*1*) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(*2*) Without prejudice to the generality of the foregoing power, such rules may—

(*a*) prescribe forms and the circumstances of their use for the purposes of this Act;

(*b*) prescribe the procedure to be followed by authorised dealers and money-changers and by persons applying for permission to do anything for the doing of which permission is necessary under this Act;

(*c*) prescribe the manner in which inquiries may be held under this Act and the procedure to be followed in respect of the proceedings before the adjudicating officer or the Appellate Board;

(*d*) provide, subject to such conditions as may be specified therein, for the publication of names and other particulars of persons who have been found guilty of any contravention of the provisions of this Act, or of any rule, direction or order made thereunder;

(*e*) provide for any matter which is to be or may be prescribed under this Act.

(*3*) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall, thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to remove difficulties.

72. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, do anything not inconsistent with such provisions for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiration of two years from the commencement of this Act.

7 of 1947.

73. (*1*) The Foreign Exchange Regulation Act, 1947 is hereby repealed. Repeal and saving.

(*2*) Notwithstanding such repeal—

(*a*) anything done or any action taken or purported to have been done or taken (including any rule, notification, inspection, order or notice made or issued, or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given or any proceedings taken or any confiscation adjudged or any penalty or fine imposed) under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(*b*) the provisions of section 53 of this Act shall apply in relation to the contravention of any of the provisions of the Act hereby repealed or of any rule, direction or order made thereunder;

(*c*) any appeal preferred to the Foreign Exchange Regulation Appellate Board under sub-section (*2*) of section 23E of the Act hereby repealed but not disposed of before the commencement of this Act and any appeal that may be preferred to the said Board against any order made or to be made under section 23D of the Act hereby repealed may be disposed of by any member of the Appellate Board constituted under this Act in accordance with the provisions of sub-section (*7*) of section 48 of this Act;

(*d*) every appeal from any decision or order of the Foreign Exchange Regulation Appellate Board under sub-section (*3*) or sub-section (*4*) of section 23E of the Act hereby repealed shall, if not filed before the commencement of this Act, be filed before the High Court within a period of sixty days of such commencement:

Provided that the High Court may entertain any such appeal after the expiry of the said period of sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period.

(*3*) The mention of particular matters in sub-section (*2*) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

10 of 1897.

STATEMENT OF OBJECTS AND REASONS

The Foreign Exchange Regulation Act, 1947 (7 of 1947) was originally enacted as a temporary measure; it was placed permanently on the Statute Book by Act 39 of 1957. There have been several amendments to the Act since then.

In the light of the experience gained during the last several years, the Directorate of Enforcement and the Reserve Bank of India have suggested and Government agreed on the need for regulating, among other matters, the entry of foreign capital in the form of branches and concerns with substantial non-resident interest in them, the employment of foreigners in India, etc.

The Report of a study team appointed by the Government on the recommendation of the Public Accounts Committee in its 56th Report of 1968 to study the question of "Leakage of Foreign Exchange through Invoice Manipulation" was received in June, 1971. The 47th Report of the Law Commission on the "Trial and Punishment of Social and Economic Offences" was also received in April, 1972. These reports have been taken into consideration and the present Bill has been drafted with the object of introducing the changes felt necessary for the effective implementation of Government's policy and removing the difficulties which have been experienced in the working of the Act.

The notes on clauses explain in detail the various provisions contained in the Bill.

NEW DELHI;
The 18th August, 1972.

Y. B. CHAVAN.

Notes on clauses

In these notes, the expression "the existing Act" means the Foreign Exchange Regulation Act, 1947.

Clause 1.—In order to remove any administrative difficulties that may arise provision has been made in sub-clause (*4*) empowering the Central Government to bring into force different provisions of the Act on different dates.

Clause 2.—This clause defines certain expressions used in the various clauses of the Bill. Most of the definitions proposed in the clause follow those contained in section 2 of the existing Act. However, sub-clauses (*m*), (*n*), (*p*), (*q*) and (*r*) are new. Sub-clauses (*p*) and (*q*) define the expressions "person resident in India" and "person resident outside India". Though these expressions occur in the existing Act, the Act does not define these expressions. The need for precise definitions of these expressions had often been felt in the course of the working of the existing Act. Such need has even become greater in the light of the several new provisions in the Bill, the applicability of which is dependent on whether a person is resident in India or outside India.

Sub-clauses (*h*) *and* (*j*) correspond to clauses (*d*) and (*f*) respectively of section 2 of the existing Act but the definitions have been made more comprehensive in the light of the experience gained in the administration of that Act.

Clauses 3 *and* 4.—Clause 3 specifies the classes of officers of Enforcement and clause 4 provides for the appointment and powers of officers of Enforcement. These clauses more or less correspond to section 2A of the existing Act.

Clause 5.—This clause empowers the Central Government to entrust the functions of the Director of Enforcement or any other officer of Enforcement to officers of Customs, officers of Central Excise, police officers or officers of the Central Government or a State Government. The clause corresponds to section 2B of the existing Act.

Clause 6.—This clause which provides for authorisation of persons to deal in foreign exchange corresponds to section 3 of the existing Act. The only change made therein is that provision has been made in sub-clause (3) for revocation of the authorisation on certain grounds.

Clause 7.—This clause is new and is intended to regulate the activities of restricted money-changers who can deal in foreign currency only in the form of notes, coins and traveller's cheques. The clause seeks to give a statutory backing to the existing practice.

Clause 8.—The clause seeks to impose certain restrictions on dealings in foreign exchange. Sub-clause (*1*) corresponds to sub-section (*1*) of section 4 of the existing Act. The explanation to this sub-clause is intended to clarify the existing position that the deposit of foreign exchange or maintenance of an account abroad in foreign exchange amounts to lending foreign exchange.

Sub-clauses (*2*), (*3*) and (*5*) correspond to sub-sections (*2*), (*3*) and (*4*) of section 4 of the existing Act.

Sub-clause (*4*) is new and is intended to prevent over-invoicing of imports. This provision has been made on the recommendation of the Study Team on "Leakage of Foreign Exchange through Invoice Manipulation" (*vide* paragraph 34 of Chapter 4 of its Report).

Clause 9.—The clause seeks to impose certain restrictions on payment and corresponds to section 5 of the existing Act. The explanation to sub-clause (*1*) (*b*) clarifies the existing position and is intended to ensure that compensatory payments prohibited under the clause do not get exempted merely because the payment is ultimately received by the party in India by way of a draft drawn on a bank in India.

Sub-clause (*3*) is intended to regulate remittances of funds in India through unofficial channels.

Clause 10.—The clause makes provision for payment of certain sums to a blocked account and corresponds to section 6 of the existing Act.

Clause 11.—This clause empowers the Reserve Bank to enforce certain restrictions on assets held by non-residents.

Clause 12.—This clause makes provision for the making of certain payments into a special account and corresponds to section 7 of the existing Act.

Clause 13.—This clause provides for certain restrictions on the import and export of certain currency and bullion and corresponds to section 8 of the existing Act. The only change made in the clause is that the import of foreign exchange in any form including traveller's cheques has been brought within the scope of the clause.

Clause 14.—This clause empowers the Central Government to acquire foreign exchange in certain cases and corresponds to section 9 of the existing Act. Certain minor changes have been effected in the clause with a view to bringing out the intention more clearly in the light of the experience gained in the working of the existing Act.

Clause 15.—Under the clause certain obligations have been cast on persons having a right to receive any foreign exchange or having a right to receive, from persons outside India, payment in rupees. The clause corresponds to section 10 of the existing Act.

Clause 16.—The clause empowers the Central Government to regulate the use or disposal of or dealings in gold or silver prior to or at the time of import into India. The clause corresponds to section 11 of the existing Act.

Clause 17.—This clause corresponds to section 12 of the existing Act and provides for control over repatriation of sale proceeds of exported goods. The scope of section 12 of the existing Act has been amplified in the clause with a view to implementing the recommendation of the Study Team on "Leakage of Foreign Exchange through Invoice Manipulation" (*vide* Chapters 5 and 7 of its Report).

Sub-clause (*1*) (*a*) corresponds to sub-section (*1*) of section 12 of the existing Act. Sub-clause (*1*) (*b*) provides that false declaration will amount to non-declaration for the purposes of the clause. Sub-clause (*1*) (*c*) empowers the Central Government to specify the goods which, if exported on consignment basis, shall not be sold without the permission of the Reserve Bank at a price less than the declared price.

Sub-clause (*2*) corresponds to sub-section (*2*) of section 12 of the existing Act except for the fact that a few minor verbal changes of a clarificatory nature have been made.

Sub-clause (*3*) seeks to provide for a rebuttable presumption regarding contravention of the provisions of sub-clause (*2*) in cases of delay in the repatriation of sale proceeds.

Sub-clauses (*4*) *and* (*5*) correspond to sub-sections (*3*) and (*4*) of section 12 of the existing Act. Sub-clause (*5*) provides for the payment of amount by the Central Government to the person transferring or assigning the title in the goods to the Central Government.

Sub-clause (*6*) corresponds to sub-section (*5*) of section 12 of the existing Act, with certain minor verbal changes.

Sub-clause (*7*) corresponds to sub-section (*6*) of section 12 of the existing Act, and provisions has been made therein empowering the prescribed authority (the Collector of Customs) also to call for the documents mentioned in the sub-clause.

Sub-clause (*8*) enables authorised dealers to accept documents, under certain circumstances, from their constituents who are not themselves exporters.

Sub-clause (*9*) confers power on the Reserve Bank to issue directions to exporters on matters such as those relating to advance registration of the contract, certification of the value by a specified authority or organisation, submission of the declaration to the Reserve Bank for its prior approval and securing payments for exports by irrevocable letters of credit. This power is to be exercised by the Reserve Bank for the purpose of ensuring that the full export value of the goods or the value which the exporter has declared is received in proper time or without delay.

Sub-clause (*10*) empowers the Central Government to prohibit the export, on consignment basis, of any goods or class of goods, or by any class of exporters or to any particular destination, if it is of the opinion that the full export value will not be brought into India in the prescribed manner or within the prescribed period.

Clauses 18 *to* 23.—These clauses correspond to sections 13, 13A, 14, 15, 16 and 17 of the existing Act with certain slight modifications which have been found necessary from the experience gained in the working of the existing Act.

Clause 24.—This clause imposes certain restrictions on persons resident in India to acquire or hold or transfer or dispose of by sale, mortgage, lease, gift, settlement or otherwise any immovable property situate outside India. The restrictions will not apply to the acquisition or transfer of any immovable property by way of lease for a period not exceeding 5 years. The clause further provides for the making of a declaration to the Reserve Bank by persons resident in India and holding any immovable property outside India of such property. Power is also being conferred on the Central Government to direct persons holding any immovable property outside India to sell the whole or any part of such property and require the proceeds of such sale to be received in India through an authorised dealer.

Clause 25.—This clause corresponds to section 18 of the existing Act with the following changes:—

(*i*) in sub-clause (*3*), which corresponds to sub-section (*3*) of section 18, instead of the concept of 'control', the applicability of the provision is to be determined by the percentage of non-resident interest;

(*ii*) sub-clause (*5*), which corresponds to sub-section (*3B*) of section 18, seeks to bring within its ambit transfers by residents in India of any interest in any business in India not merely to a foreigner, as in the existing Act, but also to the four categories of persons referred to in sub-clause (*1*) of clause 27.

(*iii*) sub-clause (*6*), which corresponds to sub-section (*3C*) of section 18, seeks to bring within its ambit, the furnishing of guarantees by residents in India in respect of a debt or other obligation or liability of a person resident in India, due or owing to a person resident outside India.

(*iv*) in sub-clause (*7*), which corresponds to sub-section (*4*) of section 18, the applicability thereof is being based on the percentage of non-resident interest and the obligation to obtain the permission of the Reserve Bank is now cast on the non-resident borrower also.

Clause 26.—This clause corresponds to section 18A of the existing Act. However, the provisions of that section have been modified and made comprehensive in the clause. The main changes are—

(*i*) a person resident outside India and a person who is not a national of India, even if he is resident in India, have also been brought within the purview of the clause, apart from the two types of companies referred to in section 18A;

(*ii*) the concept of control by non-resident has been substituted by the test of percentage holding and the degree of non-resident interest prescribed, which would bring the company within the ambit of the clause, is 40 per cent.;

(*iii*) provision has been made in sub-clause (*2*) that appointment as an agent or technical or management adviser of persons referred to in sub-clause (*1*) which are made without the permission of the Reserve Bank would be void;

(*iv*) provision has been made in sub-clause (*3*) that even in the case of existing appointment as agent or technical or management adviser, the permission of the Reserve Bank would have to be obtained for its continuance in respect of the persons referred to in sub-clause (*1*);

(*v*) sub-clauses (*4*) to (*7*) provide for the procedure in regard to the obtaining of the permission of the Reserve Bank and the consequences of rejection of an application for such permission.

Clause 27.—This clause seeks to impose certain restrictions on establishment of place of business in India. The provisions proposed in the clause are intended to regulate—

(*a*) the carrying on in India of an activity of a trading, commercial or industrial nature;

(*b*) the establishment of a branch, office or other place of business in India for carrying on a trading, commercial or industrial activity;

(c) the acquisition of the whole or any part of any undertaking in India of any person or company carrying on any trade, commerce or industry or purchase of the shares in India of any such company,

by a non-resident, foreigner (even if he is resident in India), non-resident company and a company in which the non-resident interest is 40 per cent. or more.

Sub-clauses (*2*) *and* (*3*) of the clause are intended to ensure that even in the case of existing trading, commercial or industrial activities carried on or set up in India by persons referred to in sub-clause (*1*) and existing share holdings in India by such persons in companies carrying on such activities in India, permission of the Reserve Bank would be necessary for their continuance. These sub-clauses also provide for the procedure for obtaining the permission contemplated under the clause.

Clause 28.—This clause seeks to impose certain restrictions on employment of foreigners in India, with a view to control the drain on foreign exchange.

Clause 29.—This clause imposes certain restrictions on acquisition, holding, etc., of immovable property in India by persons who are not nationals of India or companies which are not incorporated in India or in which the non-resident interest is 40 per cent. or more. The restrictions imposed by the clause will not, however, apply to the acquisition or transfer of any immovable property by way of lease for a period not exceeding 5 years. The provisions proposed in the clause are with a view to reduce the scope of drainage of foreign exchange by way of income from such property and also contingent exchange liability by way of repatriation of capital which would arise from capital appreciation.

Clause 30.—This clause corresponds to section 18B of the existing Act relating to 'P' form control. To remove certain difficulties experienced in the administration of 'P' form control, it is now proposed to lay down in the Act itself details regarding the grant of licences to airlines, shipping companies, travel agents, etc., and also to lay down the procedure and criteria in regard to 'P' form clearance. The clause mainly provides for the aforesaid purposes.

Clause 31.—The clause, which corresponds to section 19 of the existing Act, empowers the Central Government to direct owners of foreign exchange, foreign security or immovable property held outside India to submit returns to the Reserve Bank. The clause further empowers the Central Government, the Reserve Bank and any officer of Enforcement not below the rank of a Chief Enforcement Officer to require any person to furnish any information, book or other document. Though under section 19 of the existing Act officers of the Enforcement Directorate are not empowered to require any person to obtain and furnish any information, book or other document, it is considered necessary for the proper enforcement of the Act that such officers should also be so empowered.

Clause 32.—This clause corresponds to section 19B of the existing Act with the classification that the power to search may be exercised in relation to baggage also.

Clauses 33 *to* 35.—These clauses correspond to sections 19B to 19D of the existing Act.

Clause 36.—The clause corresponds to section 19E of the exisiting Act However, under the clause other officers of Enforcement authorised by the Central Government are also empowered to exercise the power under the clause.

Clause 37.—The clause corresponds to section 19F of the existing Act. Under section 19F the powers under that section can be exercised only by the Director of Enforcement. Under the clause now proposed the powers thereunder can be exercised by any gazetted officer of Enforcement.

Clause 38.—This clause which corresponds to section 19G of the existing Act enables the Director of Enforcement or any other officer of Enforcement to keep in his custody documents seized from any person for a period not exceeding one year or until the disposal of the proceedings against that person, whichever is earlier.

Clause 39.—This clause provides for the encashment of seized bank drafts, cheques, etc., during the pendency of the adjudication proceedings or the proceedings before a court of law. The proceeds realised after such encashment are to be kept in a separate account to be maintained by the prescribed authority in the prescribed manner.

Clause 40.—This clause corresponds to section 19H of the existing Act and provides for inspection of books and accounts and other documents of authorised dealers and money-changers. Under section 19H the Central Government and the Reserve Bank have power to inspect the books and accounts and other documents of authorised dealers. It is considered

from the administrative point of view that all officers of Enforcement no below the rank of an Assistant Director of Enforcement specially authorised in writing by the Director of Enforcement should also have this power. The clause makes necessary provision accordingly.

Clause 41.—The clause corresponds to section 19I of the existing Act and prohibits disclosure of documents or information by officers of Enforcement except in certain cases.

Clause 42.—The clause empowers police officers (not below the rank of a Sub-Inspector of Police) and officers of Government to enter into a public place and search and arrest any person suspected of having committed or of committing or about to commit a contravention of sub-clause (*1*) of clause 8.

Clause 43.—The clause provides for the procedure in respect of foreign exchange or any other goods seized by police officers.

Clauses 44 *and* 45.—These clauses correspond to sections 21 and 22 of the existing Act.

Clause 46.—The clause corresponds to section 23 (*1*) (*a*) of the existing Act and provides for adjudication for contravention of the provisions of the Act or of any rule, direction or order made thereunder. Under the clause, power of adjudication may be exercised by the Director of Enforcement or any other officer of Enforcement not below the rank of an Assistant Director of Enforcement specially empowered in this behalf by order of the Central Government. Whereas under the existing Act penalty is an amount not exceeding three times the value of the foreign exchange in respect of which the contravention has taken place or Rs. 5,000 whichever is more, provision has been made in the clause for the imposition of a penalty not exceeding five times the amount or value involved in the contravention or Rs. 5,000 whichever is more. This change is proposed in accordance with the recommendation of the Law Commission in its Forty-seventh Report on the Trial and Punishment of Social and Economic Offences (*vide* paragraph 15.9 of its Report).

Clause 47.—The clause provides for the procedure of adjudication and corresponds to section 23D of the existing Act. The proviso to sub-section (*1*) of section 23D has been omitted since that proviso is no longer considered necessary in view of the specific provision for prosecution contained in clause 50.

Clause 48.—This clause provides for appeals to the Foreign Exchange Regulation Appellate Board against the orders of the adjudicating officer. The Appellate Board will consist of a chairman and such number of other members not exceeding four to be appointed by the Central Government. Under sub-clause (2), before an appeal is preferred to the Appellate Board, the appellant has to deposit with the Board the sum imposed by way of penalty by the adjudicating officer. Power has been conferred on the Appellate Board to dispense with such deposit in cases if it is of opinion that such deposit will cause undue hardship to the appellant. Provision has been made in sub-section (7) empowering a single member of the Appellate Board authorised in this behalf by the Central Government to dispose of any appeal which has been allotted to the Bench of

which he is a member if the amount of penalty imposed by the order against which the appeal has been preferred does not exceed Rs. 50,000.

Clause 49.—The clause makes provision for appeal to the High Court on questions of law from any decision or order of the Appellate Board and corresponds to section 23EE of the existing Act. A time limit has been prescribed for such appeal.

Clause 50.—This clause corresponds to a part of section 23 of the existing Act. Certain important changes have, however, been made in the clause on the recommendation of the Law Commission in its Forty-seventh Report on the Trial and Punishment of Social and Economic offences (*vide* paragraphs 20, 48 and 53 of Chapter 7 and paragraphs 21 and 33 of Chapter 15 of the said Report). The important changes made are—

(*i*) Specific provision has been made for the exclusion of *mens rea*. The Law Commission in paragraph 15.34 of its aforesaid Report has considered the question whether the offences under the Foreign Exchange Regulation Act require *mens rea*. The Law Commission relying on the decision of the Supreme Court in State *vs.* M. H. George (AIR 1965 SC 722) has come to the conclusion that no *mens rea* is necessary for offences under the Act. The Supreme Court decision referred to above was in relation to an offence under section 8 of the existing Act. Even though by virtue of this decision it can be argued that *mens rea* is not necessary for an offence under the Act, it is considered necessary to put specifically beyond any doubt that it is not necessary to have *mens rea* for any offence under the Act;

(*ii*) under section 23 of the existing Act the maximum punishment imposable is imprisonment for a term which may extend to two years or fine or both. In the clause, with respect to offences where the value involved exceeds one lakh rupees, the maximum sentence imposable is imprisonment for a term which may extend to seven years. A minimum period of imprisonment for a term of six months has also been provided for such offences. Power has been conferred on the court to impose a lesser sentence of imprisonment only for special and adequate reasons to be mentioned in the judgment;

(*iii*) for other offences the sentence of imprisonment may extend to a term of three years;

(*iv*) in the case of persons who are convicted for offences under the Act (other than certain specified offences) on subsequent occasions after the first conviction, the punishment proposed is imprisonment for a term which may extend to 7 years or fine or both. In this case also a minimum term of imprisonment for six months is proposed to be provided, the court having the power to award a lesser term for special and adequate reasons to be mentioned in the judgment;

(*v*) in the case of second or subsequent conviction it is proposed to give powers to a court convicting the person to direct that the person shall not carry on for a period not exceeding three years such business as is likely to facilitate the commission of the offence;

(*vi*) sub-clause (4) of the clause specifies the factors which will not be considered as adequate and special reasons for awarding a

sentence of imprisonment for a term less than six months. Sub-clause (5) provides for the factors which should be considered as adequate and special reasons for awarding a sentence of imprisonment for a term less than six months.

Clause 51.—The clause provides for penalty for contravention of orders made by the adjudicating officer, the Appellate Board or the High Court and corresponds to section 23F of the existing Act.

Clause 52.—Sub-clause (*1*) of the clause provides for punishment for vexatious search, etc., by officers of Enforcement. Sub-clause (*2*) provides for punishment for giving false information and thereby causing an arrest or a search to be made under the Act.

Clause 53.—This clause empowers the Central Government to tender immunity from prosecution in certain circumstances. The provisions proposed in the clause are on the lines of section 291 of the Income-tax Act, 1961.

Clause 54.—This clause provides for cognizance of offences and corresponds to a part of section 23 of the existing Act.

Clause 55.—This clause provides that an offence punishable under section 50 shall be deemed to be non-cognizable. A provision like this is considered necessary with a view to preventing initiation of action by police officers in cases of suspected violation of the provisions of the law.

Clause 56.—The clause empowers the court and the adjudicating officer to direct that any currency, security, gold, silver or goods or any other money or property in respect of which a contravention of the provisions of the Act has taken place shall be confiscated by the Central Government. The provisions proposed in the clause correspond to sub-section (*1B*) of section 23 of the existing Act. A new provision has been added in the clause providing for such confiscation even in cases where the foreign exchange etc., has been converted into some other form of property including Indian currency.

Clause 57.—The clause makes preparation or attempt to contravene the provisions of the law and abetment of any such contravention an offence. Preparation to contravene is proposed to be made as an offence on the basis of the recommendation of the Law Commission contained in paragraphs 16 to 19 of Chapter 15 of its Report aforesaid.

Clause 58.—The clause provides for the correction of clerical or arithmetical mistakes in any decision or order passed by the Appellate Board or the adjudicating officer. The clause corresponds to section 23EEE of the existing Act. The proviso to the clause is, however, new and is intended to impose a time limit of two years for taking action under the clause and further to ensure that the person affected is given a reasonable opportunity of being heard in the matter in a case where he will be prejudicially affected.

Clause 59.—This clause is intended to ensure that the extenuating circumstances in section 562 of the Code of Criminal Procedure, 1898, and in the Probation of Offenders Act, 1958, will apply to offenders only if they are under 18 years of age. The provision proposed in the clause is based on the spirit of the recommendation of the Law Commission contained in Chapter 10 of its Report aforesaid.

Clause 60.—This clause applies the provisions of the Customs Act, 1962, with respect to the restrictions imposed by certain clauses of the Bill. The clause corresponds to section 23A of the existing Act.

Clause 61.—The clause relates to offences by companies and corresponds to section 23C of the existing Act.

Clause 62.—The clause empowers the court to publish the name, place of business etc., of companies convicted under the Act. The provision proposed in the clause is based on the recommendation of the Law Commission contained in paragraph 1 of Chapter 8 of its Report aforesaid.

Clause 63.—The clause provides for the recovery of sums due to Government. Sub-clause (*3*) of the clause ensures that the several modes of recovery specified in the clause shall not affect any other law in force relating to the recovery of debts due to Government or the right of the Government to institute a suit for the recovery of the amount due.

Clauses 64 *and* 65.—These clauses correspond to sections 24 and 24A of the existing Act.

Clause 66.—Sub-clauses (*1*) to (*3*) of the clause correspond to section 20 of the existing Act with certain verbal changes consequent on the inclusion of the definitions of the expressions "person resident in India" and "person resident outside India" in clause 2 of the Bill. Sub-clause (*4*) empowers the Reserve Bank to specify the forms in which applications for its permission may be made.

Clause 67.—The clause provides for the delegation of certain powers and functions of the Reserve Bank to authorised dealers and money-changers. The provision proposed in the clause is in accordance with the existing practice.

Clauses 68, 69 *and* 70.—These clauses correspond to sections 25, 25A and 26 of the existing Act.

Clause 71.—The clause provides for making of rules by the Central Government for carrying out the purposes of the Act and corresponds to section 27 of the existing Act.

Clause 72.—This is the usual provision regarding the removal of difficulties in giving effect to the provisions of the new law.

Clause 73.—Sub-clause (*1*) of the clause provides for the repeal of the existing Act. Sub-clause (*2*) makes the usual saving provision.

FINANCIAL MEMORANDUM

The existing Foreign Exchange Regulation Act which the present Bill seeks to replace already provides for the creation of the Directorate of Enforcement. The expenditure connected with the pay and allowances, etc. of the Enforcement Directorate is being regularly voted by the Parliament. The actual expenditure incurred during 1970-71 is Rs. 24.67 lakhs and the revised estimate during 1971-72 is Rs. 28.51 lakhs. The Budget Grant voted by the Parliament for 1972-73 is Rs. 31.88 lakhs. Apart from expenditure on the Directorate of Enforcement, the other expenditure incurred in the Administration of the Foreign Exchange Regulation Act, 1947 is on the post of full-time Chairman of the Foreign Exchange Regulation Appellate Board and ancillary staff created during this year. This expenditure is estimated at Rs. 60,000 per annum and is being currently met out of the grant of the Ministry of Law and Justice.

2. Clause 3 of the Bill provides for the appointment of officers of Enforcement. The Directorate of Enforcement, as it exists now, is headed by a Director of Enforcement and consists of Additional Directors of Enforcement, Deputy Directors of Enforcement and Assistant Directors of Enforcement besides other classes of officers of Enforcement. The clause contemplates the appointment of Directors of Enforcement while the present Directorate has only one Director. The appointment of one more Director is being contemplated and this additional post may entail a recurring expenditure of Rs. 50,000 per annum. The provision for this additional expenditure will be made in the budget for the Directorate of Enforcement for each year under the demand of the Cabinet Secretariat (Department of Personnel).

3. Clause 48 of the Bill provides for the constitution of an Appellate Board consisting of a Chairman and other members not exceeding four. At present the Board consists of a full-time Chairman and two other members who are regular officers of the Central Government, appointed as members of the Board in addition to their normal duties. Two other additional members proposed, if appointed, will also be regular officers of the Central Government who will be serving as members in addition to their normal duties. Consequently, the addition of two more members is not expected to involve any additional expenditure.

4. There will not be any non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 71 of the Bill confers on the Central Government the power to make Rules for carrying out the purposes of the Act. Sub-clause (2) of the clause specifies the several matters in respect of which rules may be made. Such matters *inter alia* include prescribing the forms to be used for the purpose of the Act, the procedure to be followed by authorised dealers, money-changers and others for various permissions under the Act, the manner in which inquiries may be held under the Act, the procedure in respect of adjudication and appeal proceedings and in regard to publication of names and other particulars of persons who have been found guilty of any contravention of the provisions of the Act or any rule, order or direction made thereunder.

The matters with respect to which rules may be made are thus general matters of procedure or detail and the delegation of legislative power is of a normal character.

BILL NO. 89 OF 1972

A Bill to provide for the levy and collection of a cess on limestone and dolomite for the financing of activities to promote the welfare of persons employed in the limestone and dolomite mines.

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Limestone and Dolomite Mines Labour Welfare Fund Act, 1972.

(*2*) It extends to the whole of India.

(*3*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different States.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "agent" and "owner" have the meanings respectively assigned to them in clauses (c) and (*l*) of sub-section (*1*) of section 2 of the Mines Act, 1952;

35 of 1952.

(*b*) "factory" and "occupier" have the meanings respectively assigned to them in clauses (*m*) and (*n*) of section 2 of the Factories Act, 1948;

63 of 1948.

(c) "manager" means the manager referred to in section 17 of the Mines Act, 1952;

35 of 1952.

(*d*) a person is said to be employed in a limestone or dolomite mine,—

(*1*) if he is employed within the premises or in the vicinity of such mine by the owner, agent or manager of such mine or by a contractor or any other agency exclusively in any one or more of the following, namely:—

(*i*) any limestone or dolomite mining operation;

(*ii*) the operation, servicing, maintenance or repair of any machinery or any part thereof used in or about such mine;

(*iii*) the loading, unloading or despatch of limestone or dolomite or any other material connected with the mining of limestone or dolomite;

(*iv*) any work in any office, canteen or creche situate within the precincts of such mine;

(*v*) any welfare, health, sanitary or conservancy services or any watch and ward duties at any place situate within such premises or vicinity, not being a place occupied by any residential building; or

(2) if, in any such area as may be notified by the Central Government in the Official Gazette in this behalf, he is employed by the owner, agent or manager of such mine or by a contractor or any other agency exclusively in the loading, unloading or despatch of limestone or dolomite or any other material connected with the mining of limestone or dolomite;

(*e*) "prescribed" means prescribed by rules made under this Act.

Levy and collection of cess on limestone and dolomite.

3. With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be levied and collected as a cess for the purposes of this Act on so much of limestone and dolomite produced in any mine—

(*i*) as is sold or otherwise disposed of to the occupier of any factory; or

(*ii*) as is used by the owner of such mine for any purpose in connection with the manufacture of cement, iron or steel,

a duty of excise, at such rate not exceeding one rupee per metric tonne of limestone or dolomite, as the case may be, as the Central Government may, from time to time, fix by notification in the Official Gazette.

Explanation.—Where the owner of any limestone or dolomite mine is also the occupier of any factory, then, for the purposes of clause (*ii*), all limestone or dolomite, as the case may be, produced in the mine and not sold or otherwise disposed of to the occupier of any other factory shall be deemed, unless the contrary is proved, to have been used by such owner for any purpose in connection with the manufacture of cement, iron or steel.

Payment of duty of excise.

4. (*1*) Every duty of excise leviable under this Act on limestone or dolomite shall be payable—

(*a*) to the occupier of the factory, by the person by whom such limestone or dolomite is sold or otherwise disposed of to such occupier;

(*b*) to the Central Government, by the owner of the limestone or dolomite mine where the limestone or dolomite is used by such owner for any purpose in connection with the manufacture of cement, iron or steel,

within such period as may be prescribed.

(*2*) All amounts referred to in clause (*a*) of sub-section (*1*) shall be collected by the occupier of the factory in such manner, and paid by him to the Central Government within such period, as may be prescribed.

Application of Proceeds of duty of excise.

5. (*1*) **An amount equivalent to the proceeds of the duty of excise levied under this Act, reduced by the cost of collection as determined by the Central Government, together with any income from investment of the said amount and any other moneys received by the Central Government for the purposes of this Act, shall, after due appropriation made by Parliament by law, be paid to the credit of a fund to be called the Limestone and Dolomite Labour Welfare Fund (hereinafter referred to as the Fund).**

(*2*) **The Fund shall be applied by the Central Government to meet the expenditure incurred in connection with measures which, in the opinion of that Government, are necessary or expedient to promote the welfare of persons employed in the limestone or dolomite mines; and in particular—**

(*a*) **to defray the cost of measures for the benefit of persons employed in the limestone or dolomite mines directed towards—**

(*i*) **the improvement of public health and sanitation, the prevention of disease and the provision and improvement of medical facilities;**

(*ii*) **the provision and improvement of water supplies and facilities for washing;**

(*iii*) **the provision and improvement of educational facilities; and**

(*iv*) **the improvement of standards of living including housing and nutrition, the amelioration of social conditions and the provision of recreational facilities;**

(*b*) **to grant loan or subsidy to a State Government, a local authority or the owner of a limestone or dolomite mine, in aid of any scheme approved by the Central Government for any purpose connected with the welfare of persons employed in limestone or dolomite mines;**

(*c*) **to pay annually grants-in-aid to such of the owners of limestone or dolomite mines who provide to the satisfaction of the Central Government welfare facilities of the prescribed standard for the**

benefit of persons employed in their mines, so, however, that the amount payable as grants-in-aid to any such owner shall not exceed—

(*i*) the amount spent by him in the provision of welfare facilities as determined by the Central Government or any person specified by it in this behalf, or

(*ii*) such amount as may be prescribed,

whichever is less:

Provided that no grant-in-aid shall be payable in respect of any welfare facilities provided by the owner of a limestone or dolomite mine where the amount spent thereon determined as aforesaid is less than the amount prescribed in this behalf;

(*d*) to meet the allowances, if any, of the members of the Advisory Committees and the Central Advisory Committee constituted under sections 6 and 7 respectively and the salaries and allowances, if any, of persons appointed under section 8;

(*e*) any other expenditure which the Central Government may direct to be defrayed from the Fund.

Advisory Committees.

6. (*1*) The Central Government may constitute as many Advisory Committees as it thinks fit, but not exceeding one for each of the principal limestone or dolomite producing States, to advise the Central Government on such matters arising out of the administration of this Act as may be referred to it by that Government, including matters relating to the application of the Fund.

(2) Each Advisory Committee shall consist of such number of persons as may be appointed to it by the Central Government and the members shall be chosen in such manner as may be prescribed:

Provided that each Advisory Committee shall include an equal number of members representing the Government, the owners of limestone and dolomite mines and the persons employed in the limestone and dolomite mines and that at least one member of each such committee shall be a woman.

(3) The Chairman of each Advisory Committee shall be appointed by the Central Government.

(4) The Central Government shall publish in the Official Gazette the names of all members of every Advisory Committee.

Central Advisory Committee.

7. (*1*) The Central Government may constitute a Central Advisory Committee to co-ordinate the work of the Advisory Committees constituted under section 6 and to advise the Central Government on any matter arising out of the administration of this Act.

(2) The Central Advisory Committee shall consist of such number of persons as may be appointed to it by the Central Government and the members shall be chosen in such manner as may be prescribed:

Provided that the Central Advisory Committee shall include an equal number of members representing the Government, the owners of limestone and dolomite mines and the persons employed in the limestone and dolomite mines.

(3) The Chairman of the Central Advisory Committee shall be appointed by the Central Government.

(4) The Central Government shall publish in the Official Gazette the names of all members of the Central Advisory Committee.

Appointment of Inspectors, etc., and their powers.

8. (1) The Central Government may appoint as many Inspectors, Welfare Administrators and such other officers and staff as it thinks necessary for the purposes of this Act.

45 of 1860.

(2) Every person so appointed shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

(3) Any Inspector or Welfare Administrator may,—

(a) with such assistance, if any, as he may think fit, enter at any reasonable time, any place which he considers it necessary to enter for carrying out the purposes of this Act;

(b) do within such place anything necessary for the proper discharge of his duties; and

(c) exercise such other powers as may be prescribed.

Power of Central Government to exempt.

9. Notwithstanding anything contained in this Act, if the Central Government is satisfied that there is in force in any State or part thereof a law making adequate provision for the financing of activities to promote the welfare of persons employed in the limestone or dolomite mines, it may, by notification in the Official Gazette, direct that all or any of the provisions of this Act shall not apply or shall apply to such State or part thereof subject to such exceptions and modifications as may be specified in the notification.

Annual report of activities financed under the Act.

10. The Central Government shall, as soon as may be, after the end of each financial year cause to be published in the Official Gazette a report giving an account of its activities financed under this Act during the previous financial year, together with a statement of accounts.

Interest payable by occupiers of factories and owners of mines.

11. If any occupier of a factory or any owner of a limestone or dolomite mine fails to pay any amount payable by him to the Central Government under section 4 within the period prescribed therefor under that section, such occupier or owner, as the case may be, shall be liable to pay simple interest at twelve per cent. per annum on the amount to be paid, from the date on which such payment is due till such amount is actually paid.

Penalty for non-payment of duty of excise within the prescribed period.

12. If any duty of excise payable by the occupier of the factory or the owner of the limestone or dolomite mine to the Central Government under section 4 is not paid to that Government within the period prescribed thereunder, it shall be deemed to be in arrears and the authority prescribed in this behalf may, after such inquiry as it deems fit, impose on the occupier of the factory or, as the case may be, on the owner of the limestone or dolomite mine a penalty not exceeding the amount of duty of excise in arrears:

Provided that before imposing any such penalty such occupier or such owner, as the case may be, shall be given a reasonable opportunity of being heard and, if after such hearing the said authority is satisfied that the default was for any good and sufficient reason, no penalty shall be imposed under this section.

Recovery of amounts due under the Act.

13. Any amount due under this Act (including the interest or penalty, if any, payable under section 11 or section 12, as the case may be) from any occupier of a factory or any owner of a limestone or dolomite mine may be recovered by the Central Government in the same manner as an arrear of land revenue.

Penalty for evasion of duty of excise.

14. (*1*) Whoever wilfully or intentionally evades or attempts to evade the payment of duty of excise payable by him to the Central Government under this Act, shall, on conviction, be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(*2*) No court shall take cognizance of an offence punishable under this section, save on a complaint made by or under the authority of the Central Government.

Offences by companies.

15. (*1*) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(*2*) Notwithstanding anything contained in sub-section (*1*), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(*a*) "company" means any body corporate and includes a firm or other association of individuals; and

(*b*) "director", in relation to a firm, means a partner in the firm.

Power to make rules.

16. (*1*) The Central Government may, by notification in the Official Gazette and subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) the assessment and collection of the duty of excise levied under this Act;

(*b*) the period within which the person selling or otherwise disposing of the limestone or dolomite to the occupier of the factory shall pay the duty of excise to such occupier;

(*c*) the period within which the owner of the limestone or dolomite mine shall pay the duty of excise to the Central Government;

(*d*) the manner in which the occupier of the factory shall collect the duty of excise;

(*e*) the period within which the occupier of the factory shall pay to the Central Government the duty of excise collected by him;

(*f*) the determination of the cost of collection of the duty of excise levied under this Act;

(*g*) the manner in which the Fund may be applied for the measures specified in section 5;

(*h*) the conditions governing the grant of loan or subsidy under clause (*b*) of sub-section (2) of section 5;

(*i*) the standard of welfare facilities to be provided by owners of limestone or dolomite mines for the purposes of clause (c) of sub-section (2) of section 5;

(*j*) the determination of the amounts referred to in sub-clause (*ii*) of clause (*c*) of sub-section (2) of section 5 and in the proviso to that clause;

(*k*) the composition of the Advisory Committees and the Central Advisory Committee constituted under sections 6 and 7 respectively, the manner in which the members thereof shall be chosen, the term of office of such members, the allowances, if any, payable to them, and the manner in which the said Advisory Committees and the Central Advisory Committee shall conduct their business;

(*l*) the recruitment, conditions of service and the duties of all persons appointed under section 8;

(*m*) the powers that may be exercised by an Inspector or a Welfare Administrator under section 8;

(*n*) the furnishing to the Central Government by the occupier of factories and the owners, agents or managers of limestone or dolomite mines, of such statistical and other information as may be required to be furnished from time to time by that Government;

(o) the authority which may impose any penalty under section 12.

(3) In making any rule under clause (*b*) or clause (*n*) of sub-section (*2*), the Central Government may direct that a breach thereof shall be punishable with fine which may extend to five hundred rupees.

(*4*) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule

STATEMENT OF OBJECTS AND REASONS

Welfare measures to ameliorate the living conditions of the labour employed in the limestone and dolomite mining industry are not generally satisfactory. Statutory welfare Funds exist for mica, coal and iron ore mining industries, such Funds having been established under the Mica Mines Labour Welfare Fund Act, 1946, the Coal Mines Labour Welfare Fund Act, 1947 and the Iron Ore Mines Labour Welfare Cess Act, 1961, respectively. In order to provide welfare measures for the labour employed in the limestone and dolomite mining industry also, it is proposed to establish a Welfare Fund in relation to that industry. For this purpose it is proposed to levy, as a cess, a duty of excise on so much of limestone or dolomite produced in any mine as is sold or otherwise disposed of to the occupier of any factory or as is used by the owner of such mine for any purpose in connection with the manufacture of cement, iron or steel. The rate of cess will be such rate not exceeding one rupee per metric tonne of limestone or dolomite as the Government may, from time to time, fix.

2. The proposed Fund is intended to supplement and not to supplant the efforts of the employers or the State Governments to ameliorate the living conditions of the labour employed in limestone or dolomite mining industry.

3. It is proposed to administer the Fund in consultation with an Advisory Committee which, to begin with, will be set up in each of the major limestone and dolomite producing States. Power is being taken by the Central Government to set up a Central Advisory Committee to co-ordinate the activities of the State Advisory Committees and to ensure their effective functioning.

4. The Bill is mainly designed to achieve the above objectives.

NEW DELHI; R. K. KHADILKAR.

The 22nd August, 1972.

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the levy and collection of a welfare cess as a duty of excise at a rate not exceeding Re. 1|- per metric tonne of limestone and dolomite consumed in the manufacture of cement, iron and steel. This is an enabling provision and it leaves the discretion to the Government to impose the duty at a rate it deems fit within that ceiling figure. The actual levy, for the present, is envisaged at 20 paise per metric tonne of the limestone and dolomite consumed by the cement, iron and steel industry, which is estimated to be about 22 million tonnes. The duty levied at this rate is expected to yield about Rs. 44 lakhs per annum. The proceeds thus collected will be paid into the Consolidated Fund of India. Under clause 5, an amount equivalent to the proceeds of the duty of excise reduced by the cost of collection together with any income from the investment of the said amount and any other monies received by the Central Government for the purpose of this Act shall, after due appropriation made by the Parliament by law, be paid to the credit of a Fund to be called the Limestone and Dolomite Labour Welfare Fund.

2. Under sub-clause (*1*) of clause 5 the Cement factories and Steel plants which are the biggest consumers of limestone and dolomite will act as the 'collecting agents' for the purpose of collecting the cess to be levied under the Bill. Other sizeable consumers of limestone and dolomite will also collect the cess. The 'collecting agents' will be paid suitable collection charges which are estimated at about Rs. 22,000|- per annum at the rate of 1/2 per cent. of the total anticipated collection of cess amounting to about Rs. 44 lakhs.

3. Clause 6 provides for the constitution of Advisory Committees for the principal limestone or dolomite producing States. Clause 7 provides for the constitution of a Central Advisory Committee to co-ordinate the work of the Advisory Committees constituted under clause 6. Clause 8 provides for the appointment of Inspectors, Welfare Administrators and such other officers and staff for the administration of the Act. The members of the Advisory Committees and the Central Advisory Committee will have to be paid allowances. The Inspectors and other officers and staff to be appointed under clause 8 will have to be paid salaries and allowances. It is estimated that the allowances to be paid to the members of the Advisory Committees and the Central Advisory Committee and the salaries and allowances to be paid to the Inspectors and other officers and staff will roughly come to about 6 per cent of the total anticipated collection of cess of Rs. 44 lakhs, namely, 2.65 lakhs per annum.

4. The balance of the cess will be utilised for the purpose specified in sub-clause (*2*) of clause 5 of the Bill.

5. It will be seen from the foregoing that there will be no net out-go from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 16 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Act. The matters in respect of which such rules may be made are specified in that clause. They *inter alia* relate to the assessment and collection of the duty of excise and the determination of the cost of such collection, the period within which the duty of excise shall be paid, the manner in which the Fund may be applied for the specified measures, the conditions governing the grant of loan or subsidy from the Fund, the standard of welfare facilities to be provided by owners of limestone or dolomite mines, the composition of the Advisory Committees and the Central Advisory Committee and the terms and conditions of appointment of their members. The matters with respect to which rules may be made are matters of procedure or detail.

2. The delegation of the legislative power is, therefore, of a normal character.

BILL NO. 88 OF 1972

A Bill to authorise payment and appropriation of certain further sums from and out of the Consolidated Fund of India for the services of the financial year 1972-73.

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

1. This Act may be called the Appropriation (No. 4) Act, 1972. Short title.

2. From and out of the Consolidated Fund of India there may be paid and applied sums not exceeding those specified in column 3 of the Schedule amounting in the aggregate to the sum of forty-eight crores, ninety-eight lakhs and fifty thousand rupees towards defraying the several charges which will come in course of payment during the financial year 1972-73, in respect of the services specified in column 2 of the Schedule. Issue of Rs. 48,98,50,000 out of the Consolidated Fund of India for the year 1972-73.

3. The sums authorised to be paid and applied from and out of the Consolidated Fund of India by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the said year. Appropriation.

THE SCHEDULE

(*See* sections 2 and 3)

1	2	3		
No. of Vote	Services and purposes	Sums not exceeding		
		Voted by Parliament	Charged on the Consolidated Fund	Total
		Rs.	Rs.	Rs.
7	Education	1,000	..	1,000
21	Other Revenue Expenditure of the Ministry of Finance	4,62,000	*16,000*	4,78,000
40	Police	1,48,12,000	..	1,48,12,000
44	Other Revenue Expenditure of the Ministry of Home Affairs	10,75,00,000	..	10,75,00,000
58	Ministry of Irrigation and Power	5,00,000	..	5,00,000
63	Department of Rehabilitation	..	*77,000*	77,000
74	Road and Inland Water Transport	1,95,00,000	..	1,95,00,000
76	Department of Mines	5,26,000	..	5,26,000
77	Geological Survey	..	*10,000*	10,000
85	Department of Atomic Energy	7,33,000	..	7,33,000
100	Supplies and Disposals	..	*64,000*	64,000
111	Other Capital Outlay of the Ministry of Finance	32,14,66,000	..	32,14,66,000
113	Loans and Advances by the Central Government	2,000	..	2,000
120	Capital Outlay of the Ministry of Industrial Development	1,000	..	1,000
125	Capital Outlay of the Ministry of Petroleum and Chemicals	75,29,000	..	75,29,000
129	Other Capital Outlay of the Ministry of Steel and Mines.	1,66,51,000	..	1,66,51,000
	TOTAL	48,96,83,000	*1,67,000*	48,98,50,000

STATEMENT OF OBJECTS AND REASONS

This Bill is introduced in pursuance of article 114(1) of the Constitution of India, read with article 115 thereof, to provide for the appropriation out of the Consolidated Fund of India of the moneys required to meet the supplementary expenditure charged on the Consolidated Fund of India and the grants made by the Lok Sabha for expenditure of the Central Government, excluding Railways, for the financial year 1972-73.

K. R. GANESH.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Copy of letter No. F. 5(10)-B/72, dated the 22nd August, 1972 from Shri K. R. Ganesh, Minister of State in the Ministry of Finance to the Secretary, Lok Sabha.]

The President having been informed of the subject matter of the proposed Bill to authorise payment and appropriation of certain further sums from and out of the Consolidated Fund of India for the services of the year ending on the 31st day of March, 1973, recommends the introduction of the Appropriation (No. 4) Bill, 1972 in the Lok Sabha and also recommends to the Sabha the consideration of the Bill under article 117(1) and (3) of the Constitution read with article 113 thereof.

2. The Bill will be introduced in the Lok Sabha after all the Supplementary Demands for Grants for 1972-73 have been voted.

S. L. SHAKDHER,

Secretary.

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